

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1348

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in Brief

In the
UNITED STATES COURT OF APPEALS
For the Second Circuit

Docket No. 74-1348

WARNER BROS., INC. and COLUMBIA
PICTURES INDUSTRIES, INC.,

Petitioners,

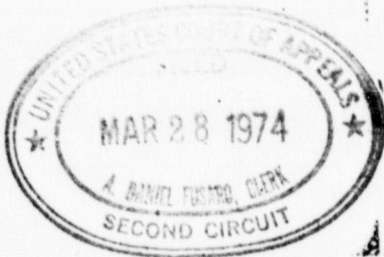
-against-

FEDERAL COMMUNICATIONS COMMISSION
and the UNITED STATES OF AMERICA,

Respondents.

PETITIONERS' APPENDIX

VOLUME I



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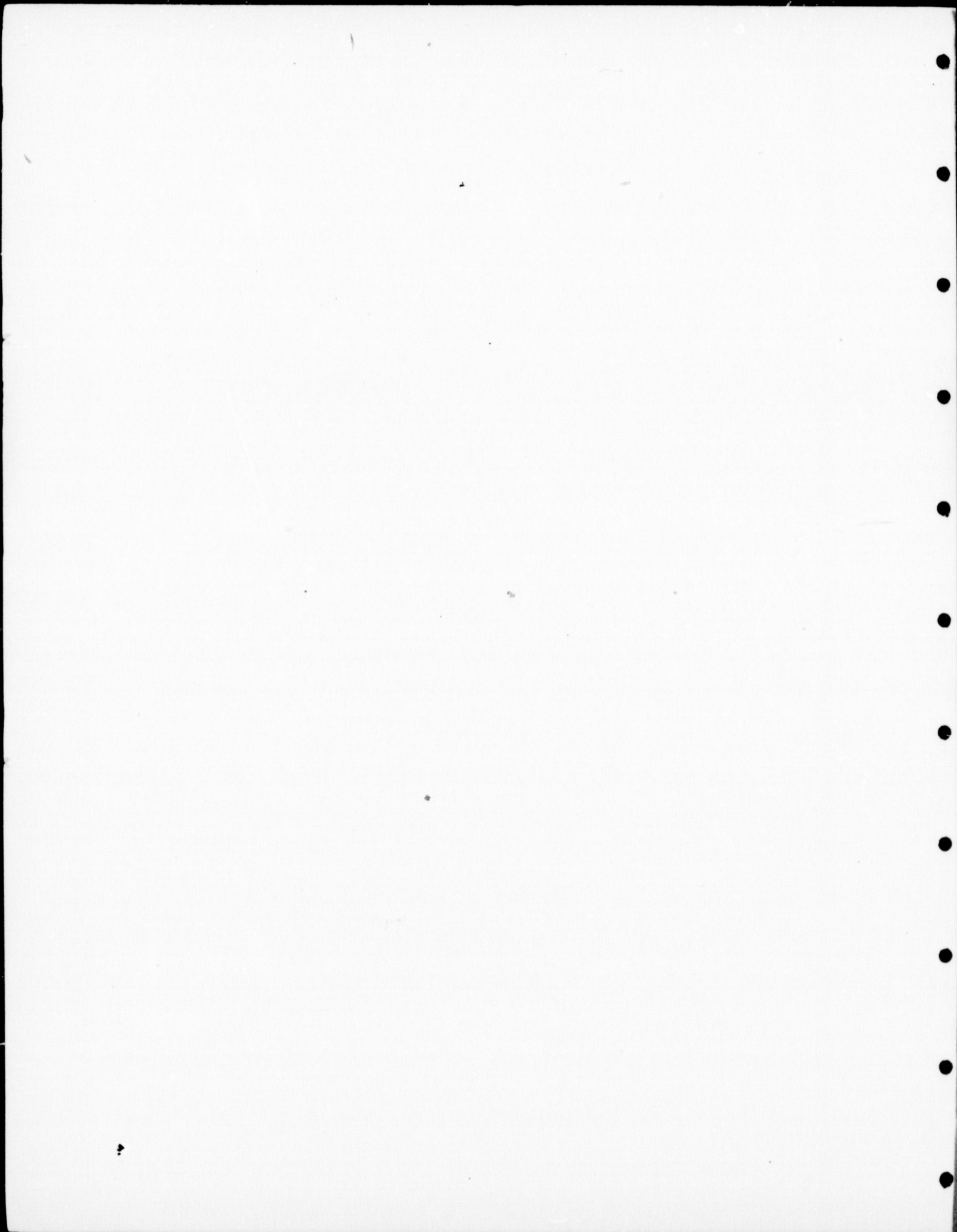
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Consideration of the operation)
of, and possible changes in,)
the "prime time access rule,")
Section 73.658(k) of the)
Commission's Rules)

Petitions of:)

National Broadcasting Company, Inc. (NBC))

Midland Television Corporation)
(KMTC, Springfield, Missouri))

Kingstip Communications, Inc.)
(KHFI-TV, Austin, Texas))

MCA, Inc.)

Docket No.:
19622

RM-1967
RM-1935
RM-1940
RM-1929

To: The Commission

COMMENTS OF WARNER BROS., INC. IN
RESPONSE TO NOTICE OF INQUIRY
AND NOTICE OF PROPOSED RULE MAKING

Warner Bros., Inc. (Warner Bros.) submits these comments in response to the Commission's Notice of Inquiry and Notice of Rule Making with respect to the prime-time access rule.

INTRODUCTION

The rule prohibits television stations in the top fifty markets from broadcasting more than three hours of

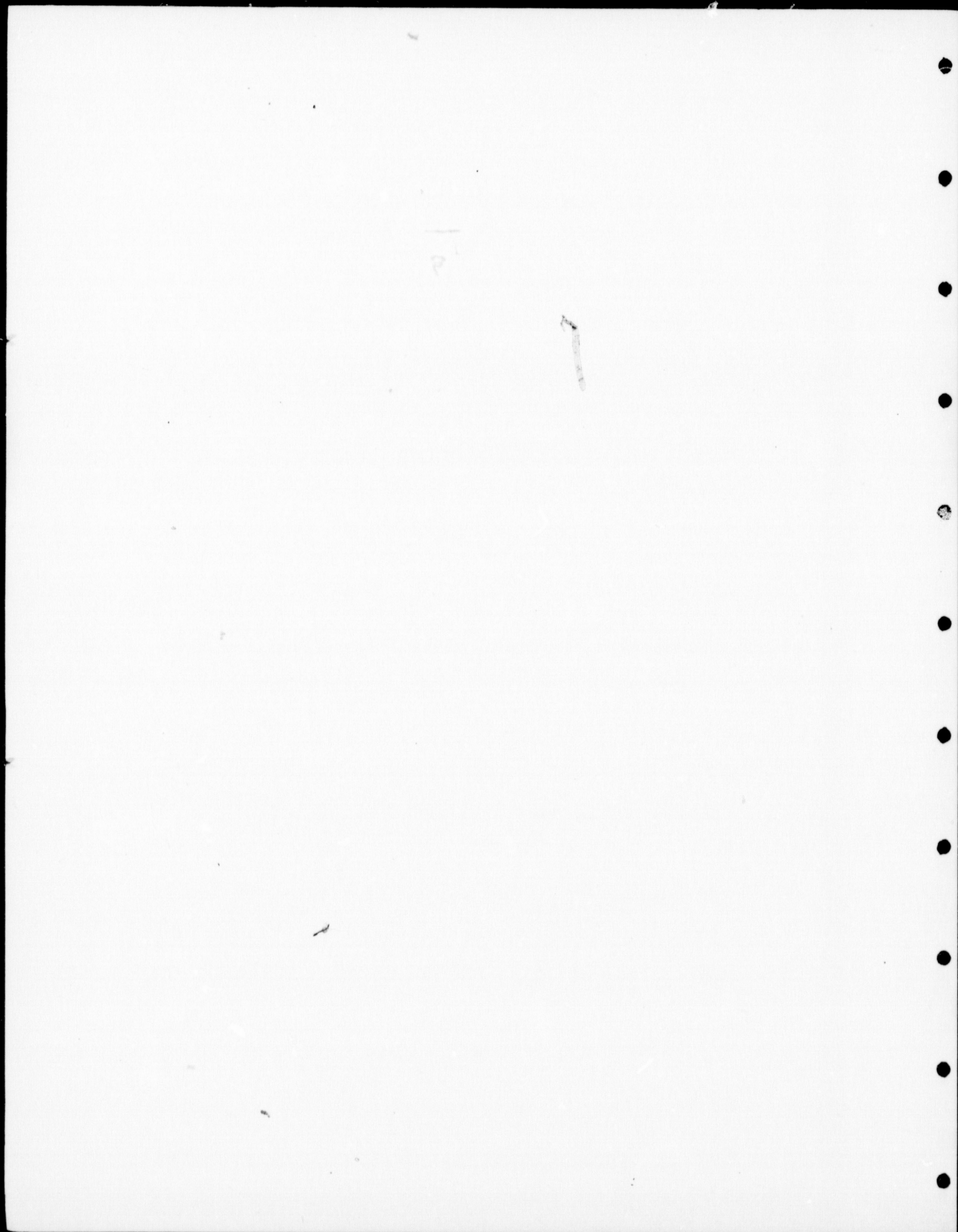
network programming during the four hours of prime-time each evening. Moreover, the rule provides that the time thus cleared of network programs may not be filled with off-network material or feature films broadcast in the market within the past two years.

The rule, adopted more than 2-1/2 years ago, represented "a breakthrough into a new area of regulation" (§10).* It constituted a departure in prior government regulation of broadcasting because it abridged the freedom of station licensees to select particular programs of their choice. In promulgating this new form of regulation, the Commission recognized that it was proceeding largely on the basis of predictions as to its future impact and indicated that it would observe the rule in operation and move swiftly if it proved ineffective or produced adverse effects.**

But now, with a record of actual experience, the Commission need no longer act on the basis of speculation about the rule's impact. Now, there is a track record of two seasons

* Paragraph references herein are to the Commission's present Notice of Inquiry and Rule Making, unless otherwise indicated.

** 23 FCC 2d 382, ¶¶24, 38, 40; Mt. Mansfield Television, Inc. v. FCC, 442 F.2d 470, 483, n. 42 (2d Cir. 1971).



of programming. The one hour prohibition on network programs became effective during the prior television season (1971-72). And, although the off-network and feature film restrictions did not become legally operative until the current season (1972-73), there was more than 77% compliance with those provisions last year (Exhibit 4).^{*} The record of two seasons demonstrates that the rule has not achieved its objectives and, instead, has produced unintended results adverse to those goals and to the public interest.

The rule was primarily designed to "promote diversity of program sources and ideas" and to "provide a healthy production industry" (¶¶18, 25). It was also anticipated that the rule might stimulate local programming by stations,^{**} assist UHF and small market stations,^{***} and perhaps facilitate the development of additional networks.^{****} The rule, as we shall show, has not fostered any of those goals.

^{*} References to "Exhibits" are to the exhibits contained in the Joint Appendix of Warner Bros., MCA, Screen Gems and Paramount Pictures Corporation being filed herein.

^{**} 23 FCC 2d 382, ¶23, n. 37, ¶25; 25 FCC 2d 318, ¶12, n. 9.

^{***} 23 FCC 2d 382, ¶¶21, 23 and n. 38.

^{****} 25 FCC 2d 318, ¶12, n. 8, ¶34.

It has been counter-productive. It has led to less diversity of program sources and ideas. It has led to less varied and less innovative programming -- primarily a mass of stripped (five times a week) game and merchandise shows, revivals of old network television programs, additional episodes of programs already available and stripped on the networks, and the importation of inexpensive foreign shows. It has produced programs that tend to under-represent the interests of minority groups. It has led to an acceleration of commercialization. It has depressed the program production industry, aggravating its already severe unemployment problems. And it has placed the Commission in the role of making judgments as to individual programs contrary to the Communications Act and the First Amendment.

On all counts, the rule has produced negative results. It has now had a fair test -- two years of operation. It should be repealed in time for the coming television season.

I

THE ONE-HOUR BAN ON NETWORK PROGRAMMING HAS PRODUCED RESULTS
CONTRARY TO THE PUBLIC INTEREST
AND SHOULD BE REPEALED

The Rule Has Decreased Diversity
of Programs and Sources

While the Commission anticipated that the rule would

stimulate a greater diversity of programs, only about 2% of the access hours using syndicated entertainment material is utilized by domestic programming that did not exist prior to the rule.* The total number of different entertainment programs in access periods has declined almost 40% since the promulgation of the rule.** And the number of different producers of entertainment programs in access periods has decreased almost 20%*** Thus, there is less -- and not more -- diversity of sources and programs.

Moreover, the rule has produced results directly contrary to the Commission's statements that it did not intend to encourage any particular type of programming.**** A comparison of entertainment programs in access periods prior and subsequent to the rule reveals the following:*****

	<u>1970-71</u>	<u>1972-73</u>
Game Shows	11.1%	48.6%
Dramas	46.3	16.5
Comedies	21.7	1.7

* Exhibit 1, Table III. As shown in said Table, in addition to 2.1% of new domestic syndicated material, access hours contain approximately 17% of programming from foreign networks existing independently of the rule.

** Exhibit 2C, Table I.

*** Exhibit 2C, Table I.

**** Current Notice, ¶43; 23 FCC 2d 382, ¶26; 25 FCC 2d 318, ¶17, fn. 15.

***** Exhibit 5, Table I.

Thus, the rule increased game shows by more than 35% and decreased dramatic and comedy programs by almost 30% and 20%, respectively.

The rule has also favored foreign production at the expense of domestic production. Since the passage of the rule, foreign production in access periods has increased from 0.1% to 20%.* The shift has been even more startling in the case of dramatic programs. Today, almost 75% of dramatic shows in access periods are foreign-produced -- whereas less than 1% were produced abroad prior to the rule.**

The rule has had another unintended effect -- discrimination against filmed production in favor of tape. As a result of the rule, taped shows in access periods increased from less than 26% to almost 72%*** And the production of new American filmed programming in access entertainment half-hours has declined from almost 60% to less than 6%****

In order to give an in-depth and descriptive picture of the impact of the rule -- and to show in more detail how it has defeated the goals of diversity -- we shall analyze this season's top 24 shows which account for more than 86%

* Exhibit 1, Table IV and Exhibit IB, Table IV.

** Exhibit 5, Table III.

*** Exhibit 5, Table II.

**** Exhibit 5, Table II.

of all access time devoted to syndicated programming.* We shall focus on those 24 programs because the access rule, in practice, had the effect of eliminating 24 one-half hours of network prime-time programming.** The following chart describes those top access shows and their prior television exposure.***

* Exhibit 2, Table I. There are actually 25 programs since the last two are tied. The other access syndicated programs -- which account for only about 14% of the balance of the time -- are also largely continuations, revivals or spin-offs of network and syndicated material or inexpensive foreign imports.

** Prior to the rule, but not thereafter, the networks programmed from 7:30 to 8 P.M. Monday through Saturday and from 7 to 8 P.M. on Sundays. They have all eliminated 7:30 to 8 P.M. Monday through Saturday. On Sundays, ABC eliminated 7 to 8 P.M., while CBS and NBC dropped the 7 to 7:30 P.M. and 10:30 to 11 P.M. periods.

*** The statistics as to years of prior exposure and number of broadcasts are based on the information that was available to Warner Bros. or, in some cases, on conservative estimates. The Commission can obtain more precise data from the producers of those shows, some of whom may be supplying such information in their comments.

NETWORK GENESIS AND EXPOSURE OF TOP CURRENT ACCESS SHOWS WITHOUT BENEFIT OF PTAR

<u>RANK</u>	<u>TITLE</u>	<u>% OF TOTAL ACCESS 1/2 HOURS OF SYNDICATED ENTERTAINMENT PROGRAMMING*</u>	<u>% OF CLEARANCE IN TOP 50 MARKETS**</u>	<u>AVAILABLE BEFORE PTAR</u>	<u>DESCRIPTION AND PRODUCER</u>	<u>YEARS OF PRIOR TELEVISION EXPOSURE</u>	<u>APPROX. NO. OF BROADCASTS WITHOUT '73 ACCESS PERIODS</u>
1	TO TELL THE TRUTH	12.1%	70%	YES	Game show (Goodson- Todman)	CBS daytime strip CBS nighttime weekly 15.3	1650
2	TRUTH OR CONSEQUENCES	12.0	68	YES	Game show (Ralph Edwards)	CBS nighttime weekly NBC daytime strip NBC nighttime weekly Syndication strip 18.1	3950
3	WHAT'S MY LINE	6.7	42	YES	Game show (Goodson- Todman)	CBS nighttime weekly Syndication strip 20.4	1730
4	HEE HAW	4.8	70	YES	Variety show (Youngstreet)	CBS nighttime weekly 1.6	73
5	LAWRENCE WELK	4.6	66	YES	Variety show (Telekew)	ABC nighttime weekly Local (LA) night- time weekly 20.5	925
6	UPO	4.5	70	NO	Adventure program (ATV)	British television network	-
7	LET'S MAKE A DEAL	3.5	94	YES	Game show (Hatos-Hall)	ABC daytime strip (still running) ABC nighttime weekly NBC daytime strip NBC nighttime weekly 11.8	2390

* Exhibit 2, Table I
 ** Exhibit 2, Table II

NET GENESIS AND EXPOSURE OF TOP CURRENT ACCESS SHOWS WITHOUT BENEFIT OF PTAR

<u>RANK</u>	<u>TITLE</u>	<u>% OF TOTAL ACCESS 1/2 HOURS OF SYNDICATED ENTERTAINMENT PROGRAMMING*</u>	<u>% OF CLEARANCE IN TOP 50 MARKETS**</u>	<u>AVAILABLE BEFORE PTAR</u>	<u>DESCRIPTION AND PRODUCER</u>	<u>YEARS OF PRIOR TELEVISION EXPOSURE</u>	<u>APPROX. NO. OF BROADCASTS WITHOUT '73 ACCESS PERIODS</u>
7	HOLLYWOOD SQUARES	3.5	96	YES	Game show (Heatter- Quigley)	NBC daytime strip (still on network) NBC nighttime weekly	1530 6.6
9	PARENT GAME (Spin-off of five similar game shows)	3.3	92	YES	Game show (Chuck Barris)	Dating Game ABC daytime strip (still on network) ABC nighttime weekly Newlywed Game ABC daytime strip (still on network) ABC nighttime weekly Family Game ABC daytime strip Game Game Syndication strip How's Your Mother- In-Law? ABC daytime strip	4020 23.0
10	WILD KINGDOM	3.0	82	YES	Animal show (Don Meier)	NBC nighttime weekly Syndication weekly	240 9.3
11	THE PROTECTORS	2.8	78	NO	Adventure program (ATV-Brut)	British network television	-

* Exhibit 2, Table I
** Exhibit 2, Table II

TABLE 2. GENESIS AND EXPOSURE OF TOP CURRENT ACCESS SHOWS WITHOUT BENEFIT OF PTAR

<u>RANK</u>	<u>TITLE</u>	<u>% OF TOTAL ACCESS 1/2 HOURS OF SYNDICATED ENTERTAINMENT PROGRAMMING*</u>	<u>% OF CLEARANCE IN TOP 50 MARKETS**</u>	<u>AVAIL. BLE BEFORE PTAR</u>	<u>DESCRIPTION AND PRODUCER</u>	<u>YEARS OF PRIOR TELEVISION EXPOSURE</u>	<u>APPROX. NO. OF BROADCASTS WITHOUT '73 ACCESS PERIODS</u>
12	CIRCUS	2.7	74	YES	Variety show (Cates-20th Fox)	Spin-off of "International Show Time" NBC nighttime weekly 4.0	200
13	NEW PRICE IS RIGHT	2.5	70	YES	Game show (Goodson- Todman)	NBC daytime strip NBC nighttime weekly ABC daytime strip ABC nighttime weekly CBS daytime strip (still running) 16.2	2660
14	YOUNG DR. KILDARE	2.3	64	YES	Dramatic show (MGM)	Remake of Dr. Kildare NBC nighttime once weekly NBC nighttime twice weekly Syndication strip 11.0	300 550+reruns
15	WAIT TILL/HOME	2.2	62	YES	Cartoon (Hanna- Barbera)	ABC-original segment of cartoon program -	1
16	POLICE SURGEON	2.2	60	NO	Dramatic program (Four Star- CTV)	Canadian television network -	-
17	BEAT THE CLOCK	1.9	12	YES	Game show (Goodson- Todman)	CBS nighttime weekly ABC daytime strip Syndication strip 15.00	2045

* Exhibit 2, Table I
 ** Exhibit 2, Table II

NETWORK GENESIS AND EXPOSURE OF TOP CURRENT ACCESS SHOWS WITHOUT BENEFIT OF PTAR

<u>RANK</u>	<u>TITLE</u>	<u>% OF TOTAL ACCESS 1/2 HOURS OF SYNDICATED ENTERTAINMENT PROGRAMMING*</u>	<u>% OF CLEARANCE IN TOP 50 MARKETS**</u>	<u>AVAILABLE BEFORE PTAR</u>	<u>DESCRIPTION AND PRODUCER</u>	<u>YEARS OF PRIOR TELEVISION EXPOSURE</u>	<u>APPROX. NO. OF BROADCASTS WITHOUT '73 ACCESS PERIODS</u>
18	MERV GRIFFIN	1.7	6	YES	Variety show (Griffin- MPC)	Westinghouse syndi- cation strip CBS nighttime strip Metromedia syndi- cation strip 7.3	1785
18	I'VE GOT A SECRET	1.7	48	YES	Game show (Goodson- Todman)	CBS nighttime weekly 15.0	750
20	THIS IS YOUR LIFE	1.7	46	YES	Game show (Ralph Edwards)	NBC nighttime weekly Syndication night- time weekly 11.0	550
21	AMAZING WORLD OF KRESKIN	1.4	40	NO	Audience participation (Bushell- Viacom)	Canadian network -	-
22	ADVENTURER, THE	1.4	38	NO	Adventure program (ATV-Brut)	British network television -	-

* Exhibit 2, Table I
 ** Exhibit 2, Table II

MARK GENESIS AND EXPOSURE OF TOP CURRENT ACCESS SHOWS WITHOUT BENEFIT OF PTAR

<u>RANK</u>	<u>TITLE</u>	<u>% OF TOTAL ACCESS 1/2 HOURS OF SYNDICATED ENTERTAINMENT PROGRAMMING*</u>	<u>% OF CLEARANCE IN TOP 50 MARKETS**</u>	<u>AVAILABLE BEFORE PTAR</u>	<u>DESCRIPTION AND PRODUCER</u>	<u>YEARS OF PRIOR TELEVISION EXPOSURE</u>	<u>APPROX. NO. OF BROADCASTS WITHOUT '73 ACCESS PERIODS</u>
22	MOUSE FACTORY (Spin-off of five similar series)	1.4	38	YES	Cartoon/ children's variety (Walt Disney)	Disneyland ABC nighttime weekly Walt Disney Presents ABC nighttime weekly Walt Disney's Adventure Time ABC nighttime weekly The Mickey Mouse Club ABC nighttime strip Syndication day and nighttime strip Wonderful World of Disney NBC nighttime weekly	24.05 4865+reruns
24	LASSIE	1.2	32	YES	Animal show (Wrather)	CBS nighttime weekly Syndication day and nighttime weekly	29.0 1450+reruns
24	HALF GEORGE KIRBY HOUR	1.2	32	NO	Variety/ comedy (Winter/ Rosen-CTV)	Originated from one-hour network special	1

* Exhibit 2, Table I
** Exhibit 2, Table II

The foregoing description of the top 24 access shows -- which preempt 86% of all access time devoted to syndicated entertainment material -- provides a full answer to the Commission's question (§18) as to "the extent to which [access] material is different from other material presented in the market currently or in the recent past." It is not different. It is virtually identical.

As shown above, the top access programs, on a combined basis, replicate approximately 31,000 different broadcasts of network or syndicated material presented without the benefit of the access rule. On an aggregate basis, the top 24 access shows have had more than 250 years of prior network or syndication exposure.

The top 24 shows fall into the following categories. Sixteen are revivals or derivative of former network shows. Others are continuations of current network programs -- including four which merely constitute the sixth episode of a program currently being stripped five times a week on the networks ("Let's Make A Deal," "Hollywood Squares," "New Price Is Right," and "Parent Game").* And five of the access shows are themselves stripped in access time in most markets in which they appear ("To Tell the Truth," "Truth or Consequences," "What's My Line," "Beat The Clock," and "Merv Griffin").

* "Parent Game," as shown above, is merely a spin-off of the currently stripped "Dating Game" and "Newlywed Game" on ABC. They are also spin-offs of "Family Game" and "How's Your Mother-in-Law?", formerly stripped as ABC, and "Game Game", stripped in syndication.

Diversity has thus been decreased by (1) continuations and revivals of shows that had many years of prior network and syndication exposure; (2) sixth episodes of shows currently being stripped on the networks; and (3) stripping of programs in access time. The end result is less variety of choice for viewers and less variety of program sources.

The prime time access rule has also led to more uniform and less diverse selection of programs by station licensees. Thus, in the 1970-71 television season, prior to the access rule, the networks cleared 1,137 of 1,537 half-hours of entertainment material in access time periods.* Network programming thus represented 74% of the total. Today, in contrast, the top 24 access programs preempt more than 86% of all half hours of access time devoted to syndicated programming.** Similarly, the top five programs presented in what is now access periods in 1970-71 occupied less than 20% of such periods devoted to entertainment.*** Today, in contrast,

* Exhibit 1B, Table I.

** Exhibit 2, Table I.

*** "Young Rebels" (5.3%), "Truth or Consequences" (4.3%), "Dick Van Dyke" (3.3%), "Mod Squad" (3.3%) and "Red Skelton" (3.3%)

the top five preempt more than 40%.*

The rule's negative results can also be demonstrated by a category-by-category description of the leading access shows. As shown above, games are the predominant access fare. They preempt almost 50% of access entertainment periods -- whereas prior to the rule they constituted only about 11%. The leading game shows -- "To Tell The Truth," "Truth or Consequences," "What's My Line," "Hollywood Squares," "Let's Make A Deal" and "Parent Game" -- are either additional episodes of shows currently available and being stripped on the networks or revivals of former network shows.

Next to games, variety programs occupy most access periods. The leading variety shows -- "Lawrence Welk" and "Hee Haw" -- are resurrected versions (with many more commercials) of programs that ran on the networks and were dropped.

Dramatic programs are the next most popular type of access fare. As shown above, the rule has led to a

* "To Tell The Truth" (12.1%), "Truth or Consequences" (12%), "What's My Line" (6.7%), "Hee Haw" (4.8%) and "Lawrence Welk" (4.6%).

decline in dramatic programming in access periods from 46% to less than 17%. That decline is particularly detrimental because independently-produced network dramatic programs are increasingly dealing with important contemporary social issues, such as racial prejudice, ecological questions, drug abuse, and problems of ghetto life.

Moreover, the rule has had another adverse impact in the area of dramatic programming. Four of the five dramatic shows among the top 24 access programs are foreign productions. Similarly, a count of all access syndicated shows and not just the top 24, discloses that almost 75% of the dramatic programs are produced abroad today.* That artificial stimulation of foreign production, as explained below, has caused under-representation of American ethnic groups and aggravated the serious unemployment problem in the American television production industry.

The adverse impact of the prime-time access rule on its goal of stimulating diversity was described as follows in a recent front-page article in the Wall Street Journal, November 24, 1972, entitled "Deja View":

"'Hee Haw.' 'What's My Line?' 'This is Your Life.' 'Lawrence Welk.' 'To Tell the Truth.'

"That sounds like a list of television hits of yesteryear. It is.

* Exhibit I, Table I.

"It is also a list of television hits of today, thanks to (some say by order of) the Federal Communications Commission. Each of these shows, its long network career finished, appeared destined for relative obscurity. Then, just over a year ago, the FCC implemented Rule 73.658(k), also known as the 'prime-time access rule.'"

But the rule has done more than just spawn familiar formats of bygone days. It has blocked opportunities for the development of new series and specials that would otherwise have been developed for family audiences who are the primary viewers of early evening television when access game shows flood the airwaves.

The rule has also led to the cancellation or shifting to other time periods of more varied program fare that had been appearing on the networks in the early evening prior to the rule -- including, for example, "High Chaparral" (dramatizing the social conflicts among Chicano, Indian and white settlers of the Southwest in the early 19th Century); "Young Lawyers" and "Storefront Lawyers" (involving the contemporary legal problems of ghetto residents); "The Interns" (a drama featuring an ethnically-mixed group of doctors in a hospital serving a major urban

community); and "The Young Rebels" (dealing with the exploits of three young patriots, including a freed slave, at the time of the American revolution).*

Instead of such programs, the rule has led to game shows, foreign imports and other inexpensive forms of programming because the economics of the first-run syndication business are simply not conducive to high-cost, high-quality or varied entertainment. That point was fully documented in comments previously filed before the Commission in seeking reconsideration of the original Report and Order.** Those comments explained that it was not realistic to expect high-quality first-run syndicated programs in access periods in view of the great expenses of distribution, production costs, audience circulation, and advertiser cost-per-thousand requirements. Since the submission of those comments, quality production costs have risen even further. Indeed, the Commission itself recently acknowledged the problems in the first-run syndication market in granting a waiver to the "Wild Kingdom"

* Time period of this show (Sunday 7 to 8 P.M.) was abandoned by ABC in January 1970 in anticipation of the rule.

** See, for example, Comments of Screen Gems (pp. 3-8) and MCA (pp. 7-18).

series.*

Lack of Local and Minority-Interest Programming

The Commission anticipated that some of the access time cleared of network fare would be filled by local programming, particularly public service material.** But the rule has not encouraged stations to present such costly material in preference to games and other inexpensive syndicated material. Thus, only about 6% of access time (exclusive of news) is devoted to local programming -- little of which falls in the public interest category.*** Indeed, "To Tell The Truth" and "Truth or Consequences" each occupy far more access time than all local programs presented in all access time periods by all 150 stations in all of the top 50 markets.

* In the Matter of Mutual Insurance Co. of Omaha, 33 FCC 2d 583, 584-5 (1972).

** 23 FCC 2d 382, ¶23, n. 37; 25 FCC 2d 318, ¶13, n. 9.

*** Exhibit 1, Table I.

Access programming, moreover, fails to give significant representation to social issues relevant to blacks, Mexican-Americans, Puerto Ricans and other ethnic groups. For example, only about 0.2% of local programs in access periods appear to be devoted to issues of special relevance to black audiences.* Moreover, since almost 75% of access dramatic syndicated shows are produced in foreign countries which do not have sizeable black or other minority groups, access dramatic shows rarely deal with themes relevant to the particular needs and interests of such groups.**

The under-representation of ethnic groups can also be illustrated by comparing current network prime-time programs with access shows. Network prime-time now contains fifteen half-hours per week in which minority actors are featured in leading roles and seventeen in which they appear in regular supporting roles.*** In contrast, only one of the

* Exhibit 1, Table I.

** For example, the English-produced access show, "Doctor In the House," is a "hospital comedy" without black leads or story-lines relevant to minority groups, while on a network in a half-hour adjacent to access time is the American-produced series "Temperature Rising" which deals with "hospital comedy" with both black leads and themes germane to ethnic groups.

*** Exhibit 6.

more widely-used access programs has a minority performer in a starring role.* Representation in broadcasting for American ethnic groups is thus being frustrated by the prime-time access rule.

The Rule Has Led to Increased Commercialization

The prime-time access rule has also led to a sharp rise in commercialization. Network programs typically contain three minutes of commercials per half hour,** followed by a 40 or 60-second station break. In contrast, access programs generally average five or six minutes of commercials, followed by 90-second station breaks.*** Viewers are thus exposed to about twice as much commercialism as before. In addition, many of the access shows feature merchandise as prizes or contain other forms of hidden commercials and

* "Half The George Kirby Hour."

** 23 FCC 2d 382, ¶14, n. 6; Appendix II, ¶17, n. 20.

*** Those figures are based on a special study prepared by Broadcast Advertiser Reports, Inc. of the commercial practices of stations in access time during a week in November in ten markets--Los Angeles, Detroit, Dallas, Baltimore, St. Louis, Minneapolis, Kansas City, Sacramento, Milwaukee and San Diego.

plugs.* The impact of this increased commercialization falls heavily on children who constitute a large segment of the early-evening viewing audience. Approximately 30% of the television audience between 7 and 8 P.M. is composed of children.**

The Rule Has Spawned Programming of Inferior Quality

In its present Notice (¶19), the Commission refers to comments as to the inferior "quality" of access programs and points out the difficulty of formulating objective standards as to the issue of quality. But the foregoing description of the leading access programs speaks for itself. Moreover, if one looks to other criteria which may bear on the question of "quality," the primary access fare would not receive high grades. That is demonstrated, not only by critical reviews, but also by criteria such as viewer reactions and production costs and elements.

* For example, a recent review of the access version of "Let's Make a Deal" in the New York Daily News, November 24, 1972 (p. 124), states in part as follows:

"I guess the thing is still around after nine years because it represents The Giveaway Show in its purest state, the idea being to put as little space as possible between prizes and people.

* * *

"Indeed, Let's Make a Deal is a half-hour commercial, perfectly distilled TV salesmanship with all the nasty creative impurities removed. It's capitalism gone crazy, plugola masquerading as show biz. . . ."

** Data from A. C. Nielsen Co. with respect to children from ages 2 through 17.

Production expenditures per half-hour of network filmed entertainment generally average more than \$100,000. On the other hand, we estimate that production expenditures per half-hour for the top three access shows (games)--which preempt more than 30% of access time using syndicated material--range from \$5,000 to \$10,000.*

To the extent that viewer acceptance provides some index of "quality," the public has also registered a negative reaction. Ratings of access programs tend to be lower than those of the network programs which they supplanted. For example, in Washington access shows attract 30% fewer viewers than the programs which they replaced.** Negative audience reaction is also reflected by TV-Q, a recognized industry survey which measures the popularity of programs on the basis of viewer's subjective preferences.*** According to TV-Q, the top access shows in the current season register average scores that are approximately 25% below those of the network programs presented in the half-hour periods adjoining access time.***

* Responses to the current Notice (§24) or Commission investigation will disclose actual as opposed to estimated figures.

** That computation is based on an analysis of data supplied by ARB for October 1970 and October 1972.

*** Exhibit 3.

Adverse Impact on Production Industry
and Decrease in Sources of Supply

The Commission, as noted above, passed the access rule to multiply competitive and diverse sources of programming. But the rule has been counter-productive in this area. An analysis of programs presented in access periods in the 1970-71 and the 1972-73 seasons shows a decline of approximately 20% in the number of different producers supplying material.*

Similarly, if we focus just on this season's top 24 access shows, there is not a single supplier-distributor who was not in business prior to the rule. All were established network suppliers.

Instead of creating diverse and antagonistic sources of programming, the rule has concentrated production in a smaller group of suppliers who specialize in game shows, including Goodson & Todman (whose games preempt 24.9% of access syndicated entertainment time) and Ralph Edwards (13.7%), and in a foreign-network producer like ATV (8.7%). Those three producers alone preempt almost 50% of the syndicated entertainment access time. That is in stark contrast to the Commission's original belief that the rule would not "carve out a haven" for certain syndicators (23 FCC 2d 382, ¶23, 25, 26).

* Exhibit 2C, Table I.

The rule's failure to stimulate a first-run syndication group of new producers is also shown by the fact that only six of this season's top 24 access shows are brand new to U.S. television--and all are produced abroad and all by suppliers who were active in the American market before the rule.

Actual operation under the rule refutes the rosy predictions of the syndicators who originally urged its adoption. In its Opinion on Reconsideration of the rule, the Commission noted (25 FCC 2d 318, ¶10) that 15 producers had asserted that "production for syndication of 'quality' programs is not only feasible but awaits only reasonable opportunity of access to high-rated evening time"--that "there will be more choices, not less, for millions of television viewers" and that first-run syndicators "will come forth with programming of values that will match or exceed the levels" of network program fare. What happened to those predictions?

Far from stimulating fresh sources of supply, the rule has had an adverse impact on independent producers of original filmed entertainment and on actors, writers, directors and other craftsmen in that industry. Since the economic plight of the film industry is well known to the Commission, we shall refer to this matter only briefly.

Between 1961 and 1972, the production of original prime-time filmed television programming by independent producers on the West Coast alone declined from 3060 to 1471 half-hour units.* In other words, there was a decline of more than 50%. Even more dramatic is the fact that since the passage of the access rule, new American filmed output in access entertainment periods has declined from over 58% to less than 6%.** As a result, unemployment among members of Hollywood unions and guilds has reached an alarming state, as shown by a recent multi-union study.*** The access rule threatens still further curtailment in new production of original filmed entertainment for television.

That has a particularly severe impact on companies like Warner Bros. which are engaged in the production of both original filmed television programs and feature motion pictures. As the Commission has recognized (23 FCC 382, 19), "the terms of market entry for the major motion picture corporations were on the whole less favorable than for the generality of packages." In addition to that disadvantage, other factors have further depressed the motion picture industry. With the advent of television, weekly theatre admissions plummeted 80% (from about 80 to 16 million) between 1946 and 1971.**** And although some part of the

* This information has been furnished by the Association of Motion Picture and Television Producers, which represents approximately 70 companies comprising most West Coast producers of motion pictures and filmed television programs.

** Exhibit 5, Table II.

*** Variety, December 27, 1972, p. 3.

**** See Comments of Program Suppliers (p. 35) in the recent Pay Cablecasting Proceeding, Docket 19554.

resulting losses were recouped by selling features to the networks, such sales declined 80% (from \$249 to \$47 million) between 1967 and 1970.* The prime-time access rule has further aggravated these problems.

The adverse impact of the rule on new production can be easily demonstrated. Prior to the rule, the three networks scheduled 75 hours of prime-time programming each week. Now, they program only 63 hours. The loss of 12 hours is equal to almost 20% of the network market which remains. That substantial loss has significantly reduced network time slots for the production of original programming--thereby shrinking the network market that was already being contracted prior to the rule.

By further curtailing the market, the rule has greatly intensified the plight of independent non-network suppliers. Development of new quality programming is expensive and entails high risks. Only a small percentage of development projects reach the pilot stage. Pilot costs now reach as much as \$300,000 to \$350,000 per half hour. Relatively few pilots are purchased for series. Once a series reaches the air, the mortality rate is high. Moreover, as the Commission has observed (23 FCC 2d 382, ¶¶ 10, 21, 29; 25 FCC 2d 318, ¶ 28), it is generally impossible to recover

* Ibid., p. 36.

production costs even from the network run of a successful series. Consequently, the post-network syndication market generally offers the only chance of recouping costs and hopefully realizing profits.

By restricting the already shrinking network market, the present rule has discouraged producers from creating original quality programming, particularly for early-evening family audiences. And new production is further inhibited by banning off-network programs from syndication in access periods in the top 50 markets--the very syndication market which the Commission itself acknowledges is vital for the economic success of most network calibre television programs.

Moreover, the rule has further aggravated the plight of American television producers and workers by promoting foreign production at the expense of domestic production. In the 1970-71 television season, prior to the rule, foreign-produced programs accounted for only 0.1% of entertainment fare presented in what became access time periods.* Today, foreign-produced shows account for more than 20% of such material.** The increase in overseas material has taken place in most program categories, including dramatic shows (from less than 1% to almost 75%), comedy programs (from less than

* Exhibit 1B, Table IV.

** Exhibit 1, Table IV.

1% to more than 62%), and variety shows (from nothing to more than 20%).* It is ironic that the Commission's rule has favored foreign over domestic production while foreign governments impose stringent quotas against the importation of American programs.**

In summary, the rule has depressed the production of high-quality and original filmed entertainment. It creates a form of economic discrimination in favor of producers of games and other inexpensive shows and foreign suppliers at the expense of producers of expensive network-calibre filmed entertainment.

Impact of the Rule on Television Stations

The Commission's present Notice (§§ 20-22) requests television stations to submit detailed financial and other information as to the impact of the prime-time access rule on them. Since Warner Bros. does not own or operate any television stations, it cannot furnish the requested data and shall therefore reserve its comments on this point for reply after the information has been submitted by stations. However, even in the absence of such data, there are certain facts

* Exhibit 5, Table III.

** The United Kingdom, which provides most of the foreign access programming, imposes a 14% quota against all overseas television programming.

already apparent which, in our opinion, demonstrate that the rule has had a negative impact, particularly on UHF stations in "intermixed" markets and stations in smaller markets.

Although the access rule is limited to the top 50 markets, the networks have discontinued service during access time to smaller-market stations. Moreover, since affiliated stations have virtually doubled commercial spots in access periods, this has had an adverse impact on UHF and many independent stations, particularly in smaller markets which have a disproportionately smaller spot-time advertising demand.

Beyond those immediate effects, we believe that the rule will have a detrimental long-range impact on UHF and independent stations. As shown above, the rule will continue to discourage production of original high-quality filmed programming for the networks and, as a result, diminish the subsequent flow of such material into the post-network syndication market. But that type of high-calibre syndicated material is vital for UHF and independent stations.

Impact of the Rule on the Networks

Since the networks will be submitting responses to the inquiries in the Commission's current Notice as to the impact of the rule on their operations, we shall also defer

detailed comments on that point until reply. However, certain facts warrant comments at this time.

ABC, unlike the other networks, did not seek reconsideration or appeal the rule. At that time, ABC was in a competitively weaker position than the other two networks and the rule might have been viewed as a way of bolstering its position. But that has changed. ABC has made significant strides in recent years and now claims parity with the other networks. Nevertheless, ABC apparently still continues to support the rule--except when it requests waivers.

In adopting the rule, the Commission anticipated that the opening up of one-hour a night of prime time would diminish the effect of the "three-network funnel" on the program selection process and thus lead to greater diversity of programming.* But, as shown above, the vast bulk of access programs are revivals or continuations of material that emerged from the funnel and generally not the best of that material.

Moreover, to the extent that a small amount of new programming has been created for access, it appears that control may have simply shifted from the headquarters of the networks to the headquarters of their O & O station groups. Each network O & O five-station group is located in markets containing about 35% of the top 50 market's television homes

* 23 FCC 2d 382, ¶23.

and thus represents a key source of support for any new material for first-run syndication. In the current season, only six of the top 24 access programs were new ventures. Five of those six appear on all or most of the network O & O stations.* The network O & O groups thus apparently exercise considerable power in determining the production and fate of new access shows.

The decrease in the available network market caused by the rule (a decrease ~~equal~~ to almost 20% of what remains) has also increased the power of the networks vis-a-vis advertisers and producers. We estimate that since the passage of the rule, network charges to advertisers have increased by approximately 20%.** However, prices paid by the networks to independent producers for programming have certainly not increased by a commensurate amount--indeed, in many important instances, prices have declined significantly. Increasing the leverage of the networks in dealing with advertisers and producers is another unintended side effect of the access rule.

* "UFO" (CBS), "The Protectors" (CBS), "Police Surgeon" (NBC), "The Adventurer" (NBC), and "Half the George Kirby Hour" (ABC). The sixth new show is "The Amazing World of Kreskin."

** The average cost per minute in network prime time has increased from approximately \$50,200 to \$59,600 between October 1970 and October 1972 according to data supplied by A. C. Nielsen Co.

II

THE BAN ON OFF-NETWORK PROGRAMS
AND THE RESTRICTION ON FEATURE
FILMS SHOULD BE REPEALED

In addition to prohibiting stations from presenting more than three hours of network programming each night during prime-time, the rule forbids them from using the cleared time to present off-network programs or feature motion pictures which were broadcast in the market within the past two years. Those restrictions, like the rest of the prime-time access rule, should be repealed.

. The Off-Network Ban

In the present Notice, the Commission acknowledges (§38) that the off-network rule is not necessary to satisfy "the objective of the rule to lessen network control of television programming." Rather, it states (§38) that the rule was promulgated for the purpose "of protecting the newly 'cleared' portion of prime time for access by non-network sources of program material" (emphasis added). But Warner Bros. is a "non-network source"--it is an independent supplier who, among other things, is seeking anti-trust relief against two of the networks.* It is certainly every bit as free of

* Columbia Pictures Industries, Inc., et al. v. ABC, et al.,
United States District for the Southern District of New York,
70 Civ. 4202.

network control as the entrepreneurs who now supply most of the access syndicated material. If network programs are barred for one hour a night, there should be no rule compelling stations to accept certain types of programs from certain independent sources and not other types from other independent sources. The ban on off-network programming creates an enclave for game-show entrepreneurs and foreign producers and penalizes independent producers of new, expensive, high-quality filmed entertainment.

The off-network ban, moreover, will have long-range adverse effects on the production of new programming. As shown above, the production of original filmed television entertainment has declined drastically. It is clearly in the public interest to reverse that trend. Producers of such material, as the Commission recognizes, depend heavily on the post-network syndication market since few television programs are able to recoup their investment from network runs. Yet, the "off-network" rule forecloses a significant portion of the post-network syndication market.

The off-network ban should be repealed for another reason. It has led to more requests for waivers than any other Commission rule and has placed the Commission in the role of making judgments on the merits of individual programs contrary to the First Amendment and the Communications Act.

The Commission recently noted the criticism that it was "really making subjective judgments as to program quality" in deciding waiver requests and acknowledged that "[t]his is at least a potential danger in the present system."* While not conceding that there were inconsistencies in prior waiver rulings, the Commission states that "this whole subject deserves more orderly treatment than it has had under the procedures which have applied so far" (§ 19).

We submit that the prior opinions on waivers have, in fact, been inconsistent and raised fundamental First Amendment issues. That is illustrated, for example, by decisions allowing factual nature shows ("Wild Kingdom" and "National Geographic") but not fictional nature programs ("Lassie"). Under the off-network rule, the Commission will continually be asked to make subjective judgments as to individual programs.

The current Notice recognizes that "the 'off-network' restriction is potentially one of the most troublesome areas of the rule" (§ 38); that it constitutes "a significant restriction, including in its present form a bar on the presentation of some highly worthwhile material" (§ 38); and that "it is questionable whether the rule if literally applied would serve the public interest" (§ 12). Accordingly, the

* In the Matter of Time Life Films ("Six Wives of Henry VIII") Memorandum and Opinion, November 8, 1972, FCC 72-985, ¶ 11.

Commission solicits comments (§§ 37-40) with respect to various proposals designed to modify the off-network rule. But analysis of the various suggestions shows that repeal is the only solution.

For example, the major proposal--namely, to permit off-network programming provided that it contains varying percentages of new episodes--would be impractical in most cases and lead to arbitrary results. The principal actors in earlier episodes of many series would not be available for new episodes. The proposed modification would thus benefit only those programs where that problem did not exist--such as animal and nature series, some variety formats or programs with rotating hosts. The proposed modification would thus discriminate among programs on the basis of fortuitous factors wholly unrelated to any public interest criteria.

The Restriction on Feature Films

The restriction on feature films is equally indefensible and counter-productive. The Commission enacted the prime-time access rule to stimulate diversity of programs and ideas. Feature films make a unique contribution to that objective, since each picture is a distinctive creative endeavor. Another objective of the rule was to decrease network control over program creation. Theatrical feature films foster

that objective, because they are made independently of, and without control or financial support from, the networks. The feature film restriction is contrary to another important Commission goal--encouraging a healthy independent program-supplier industry. The plight of independent producers is serious enough without the restraints imposed by the rule. Most features lose money at the box office and television offers the only prospect of profits. It is thus particularly inappropriate to deny such entertainment material free access to prime-time.

The "two-year" restriction on movies, moreover, is arbitrary and discriminatory. An affiliated station is perfectly free to broadcast a particular non-feature program as often as it wishes although that very same program was previously telecast many times in its market. But, under the rule, it may not make even one showing of an outstanding feature if it was used even one time before in that market in the past two years. There is no justification for treating features in a less favorable manner than other forms of programming from independent sources.

The feature film restriction deprives the public of free access to important program material. Under the rule, free access would be denied to award-winning films such as "My Fair Lady," "A Man For All Seasons," "Bridge on the River Kwai,"

"Patton," "Music Man" and "Paths of Glory" if they had been televised by a station even one time in a particular market within a previous two-year period. On the other hand, access is allowed to the "sixth" episode of a game show currently broadcast five times a week in the market.

The rule leads to other capricious results. Since the Commission granted a waiver for "The Six Wives of Henry VIII" series, how can it restrict free access to feature films such as "Becket," "Anne of a Thousand Days," "A Man For All Seasons," "Mary, Queen of Scots" or "Cromwell"? Since the Commission granted waivers to "Wild Kingdom" and "National Geographic," how can it restrict free access to "Born Free," "Walkabout," "Helstrom Chronicle," or Jacques Cousteau's "World of Silence"?

Assuming arguendo that it were permissible to draw such distinctions under the First Amendment, what possible public interest could be served by restricting free access to feature films? The Commission states (§ 43) that although "the use of feature films during early evening hours by network stations in the top 50 markets has not up to now been great" (emphasis added), this "may increase, particularly if the Commission adopts a rather liberal view." Such a development, according to the Commission (§ 43), would reduce the availability of prime-time for other kinds of entertainment fare.

But the Commission should not encourage one type of independently-produced program (game shows) and discriminate

against another (movies). Moreover, since the use of features has not been "great" during early evening hours on affiliates in the past--even during the 1971-72 season when there was no restriction against features--why should the Commission pass a drastic rule on the basis of conjecture that such use might increase? Actual experience shows that feature films occupy only 4.5% of all access time periods.* The two leading access game shows each preempt more access time than all motion pictures combined.**

The Commission now poses a series of questions as to possible changes in the feature film rule. The changes themselves show that total repeal is the only viable and fair solution.

The Commission asks (§ 41) whether a motion picture which has been shown on a network should be deemed to be "an off-network" program and therefore permanently barred from access periods. There is no conceivable justification to classify theatrical feature films as "off-network" material since they are created independently of the networks process and at great risk primarily for another medium (theatres). This proposal, moreover, would lead to the most capricious results. The best features generally play the networks. The

* Exhibit 1, Table I

** Exhibit 2, Table I

worst generally do not. "Music Man," because it played on a network, would be banned from access. "Godzilla," because it played only in syndication, would be granted access.

The Commission also asks (§ 41) whether it should continue to permit access to features shown in a market more than two years ago or whether the "period of prohibition should be longer, such as five years, or perhaps permanently with respect to a previous showing on the station itself." It would be arbitrary to impose a five-year ban and confiscatory to impose a permanent one. The Commission has never before decreed that a station may not show a particular program because it appeared previously in the market or was used by the station itself. Why should game shows be encouraged and motion pictures banned?

The Commission also asks (§ 41) whether motion pictures made for initial television exhibition should be treated in the same manner as theatrical features. We submit that they too should be freely available to stations and viewers in competition with all other forms of programming from independent producers. Banning such features would be a further impediment to a healthy industry of independents.

Finally, the Commission asks (§ 41) whether the feature film rule should be shortened to one year. While a one-year prohibition would be less detrimental than a two-year

restriction, we urge a total abolition of the feature film rule because it is counter-productive and discriminatory.

III

PROPOSED MODIFICATIONS
CANNOT SALVAGE THE RULE.
IT SHOULD BE REPEALED.

The Commission solicits comments (§ 29) as to a proposal under which stations could present network and off-network programs and restricted feature films during prime-time for a total of 21 hours per week in lieu of the present limitation of three hours per night. While that proposal would give stations greater flexibility in scheduling (and perhaps spare early-evening audiences from a steady diet of game shows), the basic rule would still not be effective in achieving its goals and would still continue to produce negative results contrary to the public interest.

With the valuable hindsight gained by two seasons of experience, it is now apparent that the rule has not been and cannot be productive, with or without the various proposed modifications. It is the wrong rule for the goals sought to be achieved. We therefore urge early repeal and suggest that the Commission explore other approaches to assure freer access for more independent voices in broadcasting.

For example, we believe that the Commission can stimulate greater access for public service programs and for

expressions of a broader cross-section of community interests within the existing regulatory framework. The recent and increasing participation of community groups in the renewal process has created a climate which will encourage the airing of more local interest material. Licensees' responsiveness to this new stimulus could be heightened by strengthening the renewal process to assure that not merely overall programming but particularly prime-time programming has been tailored to meet local needs uncovered in ascertainment studies.* Revision of renewal procedures to cast a stronger searchlight in such areas would provide a further incentive for more local programming.

We propose no quota for this type of material because quantitative floors would become qualitative ceilings. Programming which attracts and holds an audience is the substantive public interest goal rather than programming which sterily fulfills the letter of a legal requirement. For example, clearing 14 half-hour units per week of station time by the present rule has not stimulated or up-graded public service or minority-interest broadcasting in peak viewing periods.

* That would represent an improvement over the present practice under which the renewal application does not focus distinctively on prime-time. Thus Sections IV-B-4 and IV-B-5 of the television renewal form include prime-time programming in the broader 6 to 11 P.M. category and do not spotlight local interest programming broadcast in prime-time.

We believe that the Commission should also bend every effort to encourage the rapid and healthy development of new and more diverse channels of expression, including CATV, subscription services, UHF and other outlets. And with respect to both new and existing channels of expression, truly "independent" producers of programs should have full and fair access in a competitive setting.

With more outlets and unrestricted access to existing outlets, the resulting programming should be more innovative and diverse than the repetition of game shows, refurbished network programs and foreign imports which gives access hours a pattern of uniformity and sterility.

IV

THE RULE SHOULD BE REPEALED IN TIME FOR THE COMING SEASON.

We submit that the prime-time access rule should be repealed expeditiously in time for the coming television season.

Some proponents of the rule have urged the Commission to delay action by claiming that there has not been

* In addition to Commission action, some relief may be afforded by the courts in the pending antitrust actions brought by Warner Bros. and other independent suppliers and by the Justice Department. Those actions seek to preclude network production of entertainment programs for use in the limited network market. The networks originally sought to delay the private antitrust action because of the subsequent government suit. Now, they are seeking to stay the government action because of the pendency of this "prime-time access" proceeding. They are attempting to use this proceeding as a shield to prevent judicial review of their conduct under the antitrust laws.

sufficient experience under the rule. That claim is without merit. The three-hour restriction of the rule was effective last season (1971-72); and although the off-network and feature film aspects of the rule did not become legally operative until the current season, most stations began complying with those requirements of the rule during the past season. There was approximately 77% compliance with all aspects of the rule last year.* And, of course, there has been compliance with all aspects during the current television season. Thus, there is a record of two years' operation under the rule.

It may be contended that the networks might not be prepared to present an additional half-hour of prime-time programming each night as soon as the fall of 1973. However, we believe that this time can be programmed in view of the active development campaign already under way and the ability to accelerate projects on the drawing boards.

Moreover, repeal may return to the network schedules some programs, such as "Lassie" and "Wild Kingdom," which were ejected by the rule. And it would open up access for independent producers such as the Children's Television Workshop which is now requesting a waiver of the rule for an early-evening educational program for children. With repeal, a waiver for this or similar projects would be unnecessary.

* Exhibit 4.

In any event, if with early repeal some time periods are not programmed by the networks by the fall of 1973, stations could program sufficient material from other sources (including local interest shows) and the networks would certainly be fully equipped to offer programs for any unscheduled periods by January 1974--a time of the year when they traditionally make substantial revisions in their schedules anyway. As the Commission observed in its Opinion on Reconsideration (§ 43) rejecting similar arguments as to the lead-time necessary to plan schedules, "networks change their schedules during the winter on very short notice." It added (§ 43): "[W]e see no irreparable injury in the necessity for the networks to add new programs on short notice or over a somewhat longer period."

CONCLUSION

While the Commission "opened up" one-half hour of prime-time each night, the void has not been filled with programming of quality, diversity or public interest. Millions of viewers--primarily family audiences--have suffered. Independent program suppliers and other segments of the industry have also been injured. The public interest

has not been served. The prime-time rule has lasted long enough. We respectfully urge early repeal.

Respectfully submitted,

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January 12, 1973

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)	
)	
Consideration of the operation)	
of, and possible changes in,)	
the "prime time access rule,")	Docket No. 19622
Section 73.658(k) of the)	
Commission's Rules)	RM-1967
)	RM-1935
Petitions of National Broadcasting)	RM-1940
Company, Inc., Midland Television)	RM-1929
Corp., Kingstip Communications, Inc.,)	
MCA Inc.)	

To: The Commission

REPLY COMMENTS OF
WARNER BROS. INC.

The extensive comments filed herein reinforce the conclusion that PTAR has failed to achieve its objectives and been counter-productive. It should be repealed immediately and replaced with effective regulations designed to increase diverse and local-interest programming and to open up "access" to the three-network funnel.

I

PTAR HAS NOT STIMULATED
DIVERSE PROGRAMS OR SOURCES

PTAR's principal supporters do not seriously defend its performance. Instead, they claim that it is too early to

pass judgment. But a few simple statistics tell the whole story:*

- Game shows occupy 50% of syndicated access time.
- Foreign shows occupy 20%.
- Only about 2% of syndicated access time is used by new domestic programming.
- The number of different entertainment programs in access periods has declined almost 40% since PTAR.
- The number of different producers in access periods has declined 20%.
- Commercials have doubled.

PTAR's advocates cannot obscure those statistics by more grandiose predictions that the future may be better. Nor can they refute them by legerdemain.

ABC, for example, asserts (p. 10) that "there are more than twice as many producers represented in network station schedules in 1972 as during the last year of operation prior to the rule." To support that claim, ABC compares a list of 43 producers of syndicated programs in the current

* See our principal Comments (pp. 5, 6) for sources of statistics.

season with a list of 21 producers of syndicated programs in the 1970-71 season. But the 1970-71 list of 21 omits more than 30 producers who had programs on television in access periods.* The group omitted by ABC consists of independent producers of network and off-network programs. The ABC comparison is thus totally meaningless. What counts is the total number of different independent producers offering programs to the public in time periods covered by the rule. In 1970-71, there were 54 -- today, there are only 43.** There has thus been a decline of 20%. PTAR has not encouraged new entrants (TV Guide, January 27, 1973, p. 7). Only 2% of syndicated access time is devoted to domestic programming that did not exist prior to PTAR.***

In an effort to depict an increase in diversity of programs, PTAR's proponents refer to lists of approximately 60 syndicated access shows telecast during the past two seasons. But they significantly fail to disclose the percentage of access time occupied by each show or its pre-access history of television exposure. As shown in our original comments (pp. 6-8),

* JA, Ex. 2C, Table II. "JA" refers to the Joint Appendix previously submitted by Warner Bros. and certain other independent producers.

** JA, Ex. 2C, Table I.

*** JA, Ex. 1, Table III.

the top 24 shows preempt 86% of all access syndicated time and, on an aggregate basis, replicate more than 30,000 different prior broadcasts with more than 250 years of prior television exposure.

An examination of the 36 or so additional shows cited by PTAR's sponsors (which occupy the remaining 14% of access time) is hardly more encouraging.* 20 of the 36 are produced abroad.** 18 of the 36 appeared in three or fewer markets.*** Many are no longer being produced. The 36 shows basically constitute revivals of inexpensive game or talk programs or network retreads.**** There is very little new material -- and what little there is comes from abroad.*****

In view of the glaring deficiencies in existing access fare, the Association of Independent Television Stations (INTV) falls back on an optimistic forecast of the future by citing an alleged increase of new "pilots" for access programs (p. 12). INTV cites 26 pilots for the current season (Attachment 6). But its own exhibit shows that 18 are old pilots made for prior years which failed to sell. The other 8, which never got on the

* SJA, Ex. 8. "SJA" refers to the Supplemental Joint Appendix submitted herewith by Warner Bros. and certain other independent producers.

** SJA, Ex. 8.

*** SJA, Ex. 8.

**** SJA, Ex. 8.

***** SJA, Ex. 8.

air, are inexpensive talk shows or imports from Japan, England or Canada.

PTAR has not created diversity and has seriously eroded the quality of television fare. The accelerated decline in quality is illustrated by Westinghouse's selection of only six allegedly "new and innovative" series in the first access year (Commission Notice ¶ 6). Production of five of the six has been abandoned --- the lone survivor is a foreign network show ("Doctor in the House"). Games and foreign shows have taken over 70% of syndicated access time.

No matter how "quality" is judged -- whether in terms of the reaction of viewers, reviews by leading television critics, or production budgets and elements -- access shows are a failure. PTAR's proponents concede that the public has registered a negative reaction against access shows by reduced levels of viewing of such fare.* That reaction is shared by the nation's television critics:

* See e.g., Comments of ABC (pp. 12-13, 19, 28, 62) and Metromedia (pp. 28-30).

"Instead of promoting original programming, it has sent the local station managers scurrying to producers who imitate hits of the past. Instead of promoting TV production round the country, it has been a boon to Canadian and British producers . . . (Time, 2/5/73)

* * *

"A season and a half later, the rule has become a regulatory quagmire, almost wholly counterproductive as a creative stimulant, highly discriminatory in its industry impact, and hopelessly inflexible as a guideline. Specifically, it has led to an appalling proliferation of cheaply produced game shows and revivals of long-gone network attractions." (TV Guide, 1/27/73, p. 6).

* * *

"That slot [access time] has been monopolized by inane game shows and penny-budget disasters." (N.Y. Times, 9/14/72)

* * *

"'Hee Haw.' 'What's My Line?' 'This Is Your Life.' 'Lawrence Welk.' 'To Tell the Truth.' That sounds like a list of television hits of yesteryear. It is. It is also a list of television hits of today, thanks to (some say by order of) the Federal Communications Commission." (Wall Street Journal, 11/24/72, p. 1).

Since the record of two seasons of access programming is so appalling, PTAR's advocates are forced to rely primarily on rosy predictions that the future may be better. Similar promises were made to the Commission almost three years ago by 15 parties allegedly prepared to produce access programs (25 FCC 2d 318, ¶ 10). Most produced zero and understandably file no comments now. As for the rest, it is instructive to compare their promises against performance.

Westinghouse

Westinghouse was the party which first suggested PTAR. Last year, it produced five new access syndicated programs. But, except for Westinghouse's five affiliated stations, other broadcasters showed little interest in those programs. All five have been abandoned.*

Now, Westinghouse is not producing any new syndicated access shows. It is reportedly considering permanent abandonment of syndicated production.** In the meantime, it has apparently become the importer-distributor of three programs produced by other suppliers in foreign countries.***

The access programming of Westinghouse's five O & O stations is also illuminating. While Westinghouse's Comments

* The five programs were "Norman Corwin Presents", "Tom Smothers", "Street People", "Electric Impressions", and "David Frost Review". Last year, the first two shows appeared only on Westinghouse stations in access time. The next two appeared on a few non-Westinghouse stations. All four were scrapped in the first year. "David Frost" continued this year but only one non-Westinghouse station used it in access time. Production was abandoned by Westinghouse in "mid-year" according to Westinghouse's 1972 Annual Report, p. 14. Westinghouse termed the demise of the last of these shows "as regrettable from a programming point of view but inevitable in light of the economy of the TV industry in 1970 and 1971". 1972 Annual Report, p. 14.

** Variety, November 22, 1972, p. 51.

*** According to its comments (p. 8, n.5; Ex. 5), Westinghouse apparently acts as the importer of "Doctor In the House" and "Half The George Kirby Show", produced by third parties abroad. It has recently announced plans to import another existing foreign series, "Adventures in Rainbow Country." Broadcasting, March 19, 1973, p. 18.

attach schedules showing programming from 7:30 to 8:00 P.M., they omit the first half-hour of access time. In that period, Westinghouse is stripping game shows in two markets (Philadelphia and Baltimore). And in the time periods described in Westinghouse Comments, more than 50% of the syndicated access schedule is devoted to foreign productions.

Metromedia

Metromedia, like Westinghouse, is an ardent advocate of PTAR and has substantial resources and production experience, as well as six O & O stations which are assured users of its programs. In 1971, Metromedia stated that it was "preparing to produce and distribute dramatic, variety, and panel programs" for access syndication.* Despite those promises, Metromedia produced only one new syndicated access program ("Primus") last year. Metromedia's comments do not even mention that program. The reasons for that strange silence may be that Metromedia, as disclosed in NBC's Comments (pp. 13-14), was unwilling to embark on the venture unless NBC's O & O stations advanced production costs. The show failed and was cancelled in the middle of the first access year.**

* 1970 Annual Report, p. 11.

** NBC Comments, pp. 13-14, and Exhibit 3.

For the current access season, Metromedia was apparently unable to get a network O & O group to finance an access show.* As a result, it is not producing any new access programs for the current season. It is, however, continuing to syndicate the old game show "Truth or Consequences", which occupies more access time than any program except another old game show ("To Tell The Truth").**

As in the case of Westinghouse, Metromedia's access broadcast schedule is also revealing. Its one affiliated station (Kansas City) strips "Truth or Consequences".***

ABC

The five ABC O & O stations currently devote 31 half-hours of access time each week to syndicated programs -- 16 for game shows (some of which also appear on the ABC daytime network five times a week) and 14 for foreign imports.**** That is how ABC's O & O's fill almost all of their syndicated access time. By presenting inexpensive game shows and foreign imports and doubling the commercial load, ABC's O & O's -- if not

* See Metromedia Comments, Appendix V, pp. 1-2.

** JA, Exhibit 2, Table I.

*** Nevertheless, Metromedia now states (p. 20, n. 22): "Contrary to current myth, the access period was not filled with only game shows." It adds (p. 31): "[A]ny licensee who cannot program one-half hour does not deserve to be called a broadcaster."

**** SJA, Exs. 7 and 8.

the viewing public -- have reaped a rich harvest.* ABC's comments are silent as to the program practices of its O & O's.

Goodson-Todman

In 1970, Goodson-Todman urged the Commission to adopt PTAR, stating "it is our intent to produce additional program series including but not limited to game and panel shows."** But since then, it has produced only revivals of old network game shows for access periods. It now produces five games which fill almost 25% of all access time devoted to syndicated programming. That is far more than any other producer ever enjoyed in this time period. Goodson-Todman is recognized as one of the main beneficiaries of PTAR (Wall Street Journal, November 24, 1972, p. 1; TV Guide, January 27, 1973, p. 8). Its present comments are silent as to its original promises to the Commission.

Firestone Film Syndication

In 1970, Firestone promised the Commission that it would offer "excellent and diverse programming of network quality"

* A recent study of ABC, apparently based on interviews with the company, reports that the "five owned-and-operated television stations are fabulously profitable, earning some \$36.3 million in 1972 on estimated revenues of \$115 million." Forbes, February 1, 1973, p. 48. ABC recently reported 1972 overall after-tax profits of \$35.6 million. Wall Street Journal, March 7, 1973, p. 14. The importance of ABC's O & O's -- and their bonanza from PTAR -- is apparent.

** Letter to Chairman Burch, July 8, 1970.

for access time.* But, despite those promises, Firestone has merely continued syndicating the same old game shows. The only difference is that they now occupy a great deal more time. Firestone's present comments are silent as to its original promises to the Commission.

Hughes Sports Network

In 1970, Hughes told the Commission that "HSN is the very thing -- an alternate source of television programming -- that the Commission hopes to foster by adoption of the prime time access rule."** Last year, Hughes told the Commission that it was "making every effort to provide alternate sources of programming" for access periods.*** But now Hughes states (INTV Comments, Attachment 7, p. 2):

"As a direct response to the opportunity presented by the prime time access rule, we considered doing four shows for the season of 1972-1973. We got one show going, though it will end its career in December. The show is being terminated because sponsor reaction was less than desirable. It's not easy to do these shows."

* Letter to Chairman Burch, July 14, 1970.

** Petition for Reconsideration, June 8, 1970, p. 6.

*** Opposition to Midland and Kingstrip Petitions for Ruling Making, March 28, 1972, p. 3.

Instead of supporting PTAR, Hughes now asks for a waiver to present an off-network series.

National Association of Independent Television Producers

NAITP's prolix comments deserve no consideration since its alleged members are not even disclosed. The directors are revealed (Attachment A). Most of their access programs are game or foreign shows.* Moreover, the bullish predictions in NAITP's comments are deflated by the remarks of one of its directors, Allan Courtney of Youngstreet Productions, quoted in the Comments of INTV (Attachment 7, pp. 3-4):

"People have moved expediently rather than creatively to program for the periods made available for the prime time access rule. They went for the programming that was easiest to put together. They took the shows that presented the most reasonable gambles. That is why you have so many game and participation shows." (emphasis added)

* * *

In summary, the performance of PTAR's advocates does

-
- * Three of the eight directors are associated with Winters/Rosen, the founder of NAITP, which now produces one access show in Canada ("George Kirby") and allegedly plans a new one in Switzerland (NAITP Comments, p. 183, n. 85). One of the directors was an official of Four Star International, a producer of two Canadian access shows ("Police Surgeon" and "Thrill Seekers"). Another director is an official of Goodson-Todman, the producer of five access game shows.

not jibe with their original or renewed promises to the Commission. The track record of two years -- not pie-in-the-sky promises -- shows that PTAR has not and cannot produce innovative or diverse programming. The economics of the marketplace do not permit it.

II

PTAR HAS INCREASED NETWORK DOMINANCE

The present comments also demonstrate that PTAR has failed to foster its objective of decreasing network dominance. Indeed, the rule has had the opposite effect. As explained in a recent issue of Variety, February 7, 1973 (p. 56) and as shown by the comments filed by proponents of PTAR, the rule has enabled the networks to increase their leverage over affiliates, independent program suppliers and advertisers in network prime time; and in access time, the powerful network O & O station groups play a decisive role with respect to programming decisions.

Increased Power Over Affiliates

ABC acknowledges (p. 18) that PTAR has enhanced its power to obtain "better clearances" from affiliates. Peninsula, an ABC affiliate, states that "prior to adoption of the PTA rule, [it] regularly pre-empted the network in prime time" (p. 21, n. 7); but that "[u]nder the rule it has virtually ended such pre-emptions" (p. 21, n. 7); that it "has attempted to

reduce to an absolute minimum the number of network pre-emptions out of a sense of loyalty to the network" (p. 22); and that "clearance of network time by affiliates, not only by ABC affiliates, has been increased under operation of the prime time rule, perhaps out of the same sense of loyalty to network operation that motivates Peninsula" (p. 23, n. 8). In a similar vein, Variety reports that all "the networks are getting better clearances for every program in prime time than they did before the access rule" (February 7, 1973, p. 56).

This was all predictable. In supporting PTAR in 1970, ABC stated that "higher clearance levels . . . can be expected" and that the rule "may offer the benefits of option time."* It is ironic that the Commission first outlawed option time and, when that proved ineffective, passed PTAR to decrease network dominance over affiliates. Yet, the rule has made affiliates increasingly reluctant to preempt network fare in favor of local programs.

Network O & O's Control Decisions as to
Production of Access Programs

Nor has the access time period effectively lessened network influence over programming. The present comments

* Petition for Reconsideration, June 12, 1970, p. 6.

disclose that the network O & O station groups, because of their location in the largest markets, play a key role with respect to the fate of any new access programs. Metromedia, for example, states (Appendix V, pp. 1-2) that "an advertiser will not be interested in contracting for a program unless he is assured of coverage of the major markets"; this creates "the necessity of contracting with a group of network-owned-and-operated stations for coverage in the nation's three largest cities"; and "there must first be a network O & O group deal, and this must be followed by concentrated sales activities in stations throughout the country."*

Thus, the networks via their powerful O & O station groups dictate decisions as to the production of new access material. As shown in our principal comments (p. 26), the network O & O groups licensed five of the six new shows among this season's top 24 access programs - - - all were produced outside of the United States.

* Similarly, Peninsula states (p. 17) that PTAR "has not eliminated the networks from having a substantial voice in whatever success independent syndicated programs may have" because "for an independent syndicated program to achieve an economic foothold in the syndication market, it must obtain sales to the network affiliated stations in New York, Los Angeles, and Chicago in access periods."

Advertisers and Suppliers

PTAR has also increased the networks' leverage over advertisers and independent program suppliers by creating an artificial scarcity in the already limited network market.* A recent Forbes study of ABC (February 1, 1973, p. 50) states that PTAR has reduced the network market for advertisers "when demand was rising" so that "even the poorer shows sold better". Billings of the three have increased from \$1.18 to \$1.20 billion since PTAR although the rule reduced networks schedules substantially.** ABC states (pp. 17-18) that PTAR "has had beneficial effects for ABC (and may well have been beneficial for other networks as well).***"

In addition to facing increasing network leverage caused by PTAR's shrinkage of the network market, independent program suppliers are confronted by other barriers. In 1970, ABC told

* Variety, February 7, 1973, p. 56; Comments of Warner (pp. 24-26) and MCA (pp. 58-59).

** Estimates by Broadcast Advertisers Reports.

*** While ABC's present comments state (p. 18) that PTAR is one of "various factors" which has improved its competitive position vis-a-vis the other networks, ABC has recently attributed its success primarily to other factors--particularly to its dramatic improvement in daytime ratings. Thus, ABC's President reportedly stated: "Daytime is the bankroll of the business. That's where the profit is made." Forbes, February 1, 1973, p. 49. In any event, PTAR was not passed and cannot be supported as a means of increasing the power of any or all networks by creating an artificial scarcity in the network market. The rule was designed to decrease not increase network dominance.

the Commission that the financial interest rule "will almost inevitably lead the network companies to greater amounts of in-house production, and consequently to lessen reliance upon independent producers."* That prediction has been fulfilled. Increased in-house production has denied independent suppliers competitive access to the tight network market. PTAR has contracted the market even further.

* * *

Westinghouse states (p. 26): "No one has seriously questioned the basic need for the rule (or alternative regulatory action) to alleviate the problem of network dominance." We agree. But PTAR has aggravated and not alleviated the problem.

III

PTAR HAS FAILED TO PRODUCE LOCAL OR MINORITY-INTEREST PROGRAMMING

As shown in our principal Comments (pp. 14-15), PTAR has caused a significant decline in the representation of blacks and other minority groups on television and in the presentation of social issues relevant to such groups.

Some PTAR proponents now argue that television already presents sufficient "minority-oriented programming"*** and that the

* Petition for Reconsideration, June 12, 1970, p. 13.

** Comments of Metromedia, p. 29.

Commission should not place "too much emphasis upon local use".* Other proponents make vague claims that PTAR has in fact increased local-interest programming. But no supporting statistical proof is cited. The record shows that only about 6% of access time (exclusive of news) is devoted to local programming; little of this falls in the public interest category; and virtually none is devoted to issues of special relevance to minority audiences.** There is less local interest programming in the second access year than in the first.*** The leading access game shows each occupy more time than all local interest programming on all 150 affiliates in the top 50 markets.****

* Comments of ABC, p. 58.

** JA, Ex. 1, Table I. And even this small amount of local programming, as ABC acknowledges (p. 15), "might have been presented in any event" without PTAR.

*** Compare JA, Ex. 1, Table I, and Ex. 1A, Table I.

**** Compare JA, Ex. 1, Table I, with Ex. 2, Table I. Local interest programming in access time on the typical affiliated station is undoubtedly far lower than even the foregoing minimal figures suggest because stations in a few atypical markets--such as Boston which is heavily relied upon in Westinghouse's Comments (p. 12)--present more local interest programming than the average station for reasons (such as license revocation problems) wholly unrelated to PTAR. Indeed, the schedules submitted by Westinghouse (Exhibit 1) show that some affiliates in its other markets present virtually no local interest programs in access periods and rely almost exclusively on game shows (e.g., Philadelphia, Pittsburgh, Baltimore).

ABC's claim (p. 15) that PTAR has stimulated local programming is refuted by its own Exhibit E, which shows the meager amount of such programming on affiliated stations in most of the top 50 markets:

<u>Number of Markets</u>	<u>Number of one-half hours of local news and public efforts</u>
11	0
15	1
<u>9</u>	<u>2</u>
35	3

Metromedia claims that it can produce public affairs programs for access (Appendix V, p. 2). But it has not done so. To support its claim, Metromedia cites (Appendix, pp. 2-4) public affairs programs produced a long time ago by Wolper Productions. NAITP also relies on Wolper (p. 57). But Wolper explains in its Comments why PTAR has not and cannot possibly support syndicated public affairs programs.

PTAR's failure to stimulate public affairs, educational or local programming is apparent to those who monitor the industry. TV Guide recently reported:*

* January 27, 1973, p. 7.

"Among 150 network affiliates in the 50 largest markets, only nine stations aired news across the board at 7:30 and only one (WCVB in Boston) appropriated nightly time for 'public affairs.'"

The president of Taft Broadcasting, whose independent station is represented by INTV, recently stated that in access time "do-gooder shows have failed miserably."*

PTAR has not stimulated local-interest programming or public affairs material directed to minority and other groups in access time. And in non-access prime time, affiliates are more reluctant than ever to preempt the networks for local programming.

IV

PTAR HAS LED TO A VAST INCREASE IN COMMERCIALIZATION AND BARTER

PTAR's advocates agree that, as shown in our principal Comments (pp. 15-16), access programs contain a great many more commercials than the network programs which they supplanted.** That increased commercialization in the early evening has a heavy impact on children -- a matter of grave concern to the Commission

* Wall Street Journal, November 24, 1972, p. 1.

** See, e.g., Comments of ABC (p. 16) and INTV (p. 9).

and the Congress (Broadcasting, March 5, 1973, p. 20). The Chairman of the Commission is reported to have recently said: "They [children] should not be inundated with commercial messages well beyond the amount run on adult prime time." (Ibid. p. 21)

Despite the impact on children, PTAR's champions view accelerated commercialization as a blessing because it offers more opportunities for local advertisers. But the rule was not passed to double the commercial load for youngsters. Nor is there any evidence of a shortage of spot availabilities for local advertisers.

To the extent that PTAR has implications for sponsors, it is primarily for the nation's largest advertisers which now fill a substantial portion of access time with bartered shows.* The percentage of access hours devoted to bartered entertainment programming increased from approximately 3% to 24% as a result of PTAR.** Peninsula states (p. 12):

"... it is not unheard of for the offer of the bartered program to be accompanied by the suggestion, if not the outright commitment, that substantial blocks of the advertiser's other business will find its way to the station clearing the bartered program. Such heavy-handed, if not illegal, selling tactics associated with bartered programs are not

* See SJA Ex. 8; Comments of Peninsula, Appendix E; Comments of the CBS Television Affiliates Association, pp. 15-16 and Appendix B.

** SJA, Ex. 9.

designed to enhance the public interest programming judgment which the Commission calls upon individual station licensees to make."

Similarly, the CBS affiliates -- almost 200 stations -- state (p. 16) that "it must be recognized that a station may be induced to accept a bartered show offered by an otherwise substantial advertiser" and that "bartering ought not be affirmatively encouraged."

But PTAR has encouraged barter. The percentage of bartered access time has increased from 3% to 24%. Indeed, one of PTAR's principal proponents states that barter is a sine qua non of much access production.*

V

PTAR HAS ARBITRARILY DISCRIMINATED AGAINST DOMESTIC PRODUCTION

PTAR's proponents do not deny that the rule discriminates against domestic and in favor of foreign production.** Foreign programming in access periods has increased from

* Remarks of Allan Courtney, a director of NAITP, quoted in the Comments of INTV, Attachment 7, p. 10.

** Indeed, those proponents who specialize in foreign production are reluctant to disclose that fact to the Commission. For example, NAITP claims (p. 39) that its members are "more efficient" and "more resourceful" than other independent suppliers but fails to mention that its leading American directors concentrate on foreign production.

0.1% to 20.3% since PTAR.* The increase in dramatic programs is even higher -- almost 75% are now foreign.** At the same time, foreign governments impose stringent quotas against American television programs. As ABC observed several years ago in a related context, this is not "conducive to the U.S. balance of payments in international trade" and gives "British and Canadian producers . . . an unfair competitive advantage over U.S. producers."***

The foreign wave has been stimulated by PTAR's leading spokesman. Westinghouse has now abandoned domestic production and become an importer-distributor of three access shows; and its stations devote more than 50% of their syndicated access time to foreign shows. Similarly, ABC's O&O's rely heavily on foreign access fare. Metromedia is reportedly going to Ceylon for an access show next season.**** And NAITP's founder is going to Switzerland.*****

* JA Ex. 1, Table IV; Ex. 1B, Table IV.

** JA Ex. 5, Table III.

*** ABC Petition for Reconsideration, June 12, 1970, pp. 5, 10.

**** Variety, February 7, 1973, p. 48.

***** NAITP Comments, p. 183, n. 85.

VI

PTAR HAS INJURED THE INDEPENDENT
TELEVISION PRODUCTION INDUSTRY

Comments by numerous parties -- unions, small independent producers and motion picture studios -- demonstrate that PTAR has seriously injured the already depressed American filmed television program production industry.* The loss to the domestic program production industry is estimated to exceed \$60 million.**

ABC seeks to obscure that fact (pp. 35-36) by pointing to a rise in the production of theatrical feature films. But ABC avoids mention of the continuing down-trend in the production of original filmed television programs -- a decline of 50% in the past decade which is now being accelerated by PTAR.

ABC also denies (p. 37) that there is a serious unemployment problem in the domestic production industry.*** But

* Screen Actors Guild, Hollywood AFM Film Council, Writers Guild of America (West), Composers and Lyricists Guild, Samuel Goldwyn Studios, Wolper, QM Productions, Wrather Corporation, Warner Bros., Screen Gems, MCA, Paramount, Twentieth Century-Fox.

** Comments of NBC, p. 3.

*** It points (p. 37) to unemployment insurance figures in Hollywood for two months. But that does not give a true picture of unemployment. It does not include the large number of persons who used up their unemployment benefits after 26 weeks, those who left the industry completely because of the unemployment crisis, and those who are now relegated to part-time work.

that well-known problem is documented in Comments filed by four major labor unions representing approximately 50,000 members. Those comments show unemployment rates as high as 85% in the largest unions and a loss of more than 16,000 jobs as a result of PTAR.*

While PTAR's advocates continually refer to "independent" producers and syndicators as a class requiring encouragement from the Commission, they ignore the fact that the motion picture companies are "independent" of the networks. Indeed, they have been most oppressed by the networks (23 FCC 2d 382, ¶ 9) and, as a result, have brought an antitrust action. They produce and syndicate some of the most popular forms of dramatic, comedy, and varied television programming. They also produce, at great risk and independently of the networks, feature films -- material that is vital for programming by all segments of the television industry.

* See Exhibits A and B of Comments of Screen Actors Guild, Hollywood AFM Film Council, Writers Guild of America (West), and Composers and Lyricists Guild. Similarly, the Comments of Samuel Goldwyn Studios, which rents studio facilities to independent producers, report a 25% drop in original film production since PTAR.

A Commission rule which injures this important class of "independent" producers/distributors and favors stripped game shows and foreign imports is clearly contrary to the public interest. Is Warner Bros. any less "independent" than Goodson-Todman, which now controls 25% of syndicated access time with old network game shows, one of which ("What's My Line") is syndicated by the CBS "spin-off" (Viacom) and another of which ("I've Got A Secret") is an access show on all CBS O&O's? Is Warner Bros. any less "independent" than Chuck Barris which produces an access game show ("Parent Game") for all the ABC O&O's that is a spin-off of similar game shows currently being stripped on the ABC daytime network and which now plans to do access versions of other game shows* currently stripped on the ABC network? The public interest does not permit discrimination against certain "independent" producers and favoritism for other "independents".

VII

PTAR HAS INJURED MANY TELEVISION STATIONS, PARTICULARLY UHF AND SMALL-MARKET STATIONS

Various large-market stations and group owners** urge retention of PTAR for their own financial reasons. Some large-market affiliates apparently view PTAR as a windfall -- they

* See comments of INTV, Attachment D (p. A-18). Also see SJA, Ex. 7, and description of "Parent Game" in the chart (p. 11) following p. 7 of our principal Comments.

** E.g., ABC, Westinghouse, Metromedia and INTV.

present cheap games or foreign imports and double the commercial load. Some large-market independents apparently favor PTAR because it affords them an unfair competitive edge -- they can use popular off-network programs and movies in access periods while their rivals are limited to inexpensive game and foreign shows. But public interest considerations, not a private bonanza from an artificial rule, should govern.

It is apparent that PTAR has had an adverse impact on many stations in smaller markets and has not eased the plight of UHF. A recent review of PTAR in TV Guide concludes: "The big-city stations are cashing in; stations in smaller localities -- where budgets are smaller and sponsors harder to find -- are losing money."* ABC agrees (pp. 31-32, 63) that there has been injury to stations in small markets, but concludes that this is "an acceptable price" to pay for PTAR's alleged benefits. One of the principal benefits, according to ABC (pp. 17-18), is that PTAR has increased its profits -- profits which rose to \$35 million in 1972.** ABC's present attitude about injury to weaker stations is in contrast to the views it expressed to the Commission several years ago in urging adoption of PTAR. It then supported

* January 27, 1973, p. 8.

** Wall Street Journal, March 7, 1973, p. 14.

the rule as an "interim measure pending the more full development of UHF".*

INTV, the spokesman primarily for the largest independent stations, represents 30 owners of 44 stations. Almost 50% of INTV's stations have the benefit of being located in the nation's top 10 markets. Eleven of the owners of non-affiliated stations represented by INTV also operate more than 25 stations which are network affiliates. An analysis of the access programming of those affiliates is revealing. They fill most of their access time with game shows (often stripped) and foreign imports. For example, game shows are stripped in access period by Taft in Kansas City (as well as by Metromedia), Birmingham and Columbus; by Cox in Dayton and Charlotte; by RKO General in Boston and Memphis; by Meredith in Syracuse; and by Oklahoma Publishing in Tampa.

Comments by some multiple owners, whose independent stations are represented by INTV, with respect to the access schedules of their affiliated stations are also illuminating. For example, a Taft official is reported to have conceded that access shows (largely stripped games) on its affiliated stations "aren't the artistic equivalent of the Pieta", but "economically

* ABC Petition for Reconsideration, June 12, 1970, pp. 2, 3, 6, 7, 14.

we are doing quite well."* Similarly, an official of Cox Broadcasting -- which presents more than 20 half-hours of game shows in access periods -- is reported to have stated that under PTAR "overall were making more money this way."** Those statements, and the access programming on the affiliates of INTV's owners, undermine that association's comments.***

* Wall Street Journal, November 24, 1972, p. 11

** Wall Street Journal, November 24, 1972, p. 11.

*** In reply, some proponents will probably rely on the so-called "poll" on PTAR at the recent conference of the National Association of Television Programming Executives (NATPE). That poll, according to trade papers, showed that 32% of the voters favored PTAR in its present form, 43% wanted revisions, and 24% desired repeal. But Commission action is based upon public interest factors, not alleged popularity contests. The so-called NATPE poll, in an event, is totally unreliable and tainted. Those voting included access producers and syndicators as well as "unidentified stations, editors, advertisers, station reps and researchers" according to Variety, February 28, 1973, p. 8. An access producer or station group favoring PTAR was allowed multiple votes by registering more than one representative -- a luxury not available to most small market and UHF stations who were sparsely represented. A more carefully-structured research survey by Broadcast Information Bureau, Inc. (BIB) produced opposite results. According to BIB, only 5% of the stations believed that PTAR had achieved its objectives and only 38% favored the rule. Facts, Figures & Film, February 1973. Both polls, however, reflect one common reaction -- station opposition to PTAR is greatest in the smaller markets. Polls aside, the overwhelming number of stations filing comments in this proceeding, directly or through associations, strongly oppose PTAR.

VIII

THE BAN ON OFF-NETWORK PROGRAMS
AND THE RESTRICTION ON FEATURE
FILMS SHOULD BE REPEALED.

The statements of PTAR's supporters confirm the demonstration in our principal Comments (pp. 27-35) that there should be immediate repeal of the two-year restriction on feature films and of the permanent ban on off-network programs.

Feature Films

Those who urge retention of the two-year feature film restriction do so for economic reasons. Game show entrepreneurs and importers of foreign access material seek a protected haven for their fare. Independent stations seek favored status -- the unrestricted right to use features which is now artificially denied to their competitors.

The two-year movie restriction, as the present comments confirm, has a compound and adverse impact on stations, independent producers and the viewing public. Stations cannot show "restricted features" in access time or in earlier fringe time since they will overlap into access time. And in prime time, stations cannot show features because PTAR has virtually eliminated the preemption of network fare. Stations, as explained in Peninsula's Comments (pp. 18-25), are thus severely handicapped in scheduling independently of the networks and deprived of

material which viewers want. Peninsula explains (p. 25) that PTAR will drive it "to cheap game and party shows, barter programs of an unknown quality, and foreign made product."

The adverse impact on independent producers are also now apparent. The market for feature syndication has dried up. Sales plummeted from \$94 to \$49 million between 1970 and 1971.*

Independent non-network producers of features are now oppressed (1) by declining theatrical audiences (from 80 to 16 million since 1946); (2) by leverage from the networks and declining sales of features to them (from \$249 to \$56 million since 1967); (3) by Commission limitations on the use of movies on subscription television and cable (restrictions supported by PTAR's protectionists); and (4) now by PTAR's devastating impact on syndication sales to stations. All of this has happened in spite of the fact that the Commission has continually recognized the vital importance of fostering a healthy industry of independent producer/distributors **; and it has also recognized the unfair leverage exercised by networks over motion picture producers in

* Statistics compiled by Motion Picture Association of America.

** 23 FCC 2d 382, 386; 24 R.R. 2d 1501, 1534;
27 FCC 2d 13, ¶ 13.

particular.*

The ban on off-network programs

Those urging continuation of the off-network ban are, once again, game promoters or foreign importers who seek a protected enclave, or independent stations who seek a monopoly on this popular form of programming in access time. They argue for protectionism and advance no cogent rationale for the off-network ban.

Westinghouse, for example, urges (p. 17) retention of the off-network ban on the theory that it is necessary to assure cleared time for new access programming. It states (p. 17) that "the need for this restriction has not subsided since that time [1970]". But in 1970, before it became the importer-distributor of three foreign syndicated access shows, Westinghouse told the Commission that "it does not consider such prohibition absolutely essential to the success of the rule".**

Westinghouse is now free to use access time to present reruns of the five access shows which it stopped producing and the

* In the original PTAR opinion, the Commission stated that "the terms of market entry for the major motion picture corporations were on the whole less favorable than for the generality of packagers" (23 FCC 382, ¶ 9).

** Opposition to Petition for Reconsideration, July 2, 1970, p. 19.

three foreign programs which it is now importing. Yet, it now claims that a ban on reruns of off-network programs is essential. This is the type of discrimination created by PTAR.

IX

PTAR HAS HAD A FAIR TEST AND FAILED

PTAR's proponents claim that it has not had a fair test because last year many stations presented off-network programs and movies in access time since the restriction on such material did not go into effect until this season. Those claims -- all made without supporting statistical data -- are refuted by the record. Research statistics show that there was 77% compliance with all aspects of the rule last year even though the off-network and feature restrictions were not then legally operative.* In addition, there has been virtually 100% compliance with all provisions of PTAR this year. Thus, there is a track record of two years -- two years of disastrous results.

Metromedia claims (pp. 6-10) that PTAR has not had a fair test because uncertainty about the rule's future has retarded "the inclination of independent producers to make the necessary investments". That is just rhetoric. Last year, Westinghouse made five access shows. Metromedia made one. All were cancelled

* JA, Ex. 4.

in favor of inexpensive game shows and foreign imports. What "uncertainty" faces the producer of the sixth episode of a stripped game show or of a program made for a foreign network?

In arguing for more time, ABC claims that further experience under PTAR may produce better results -- that "[i]nnovation typically follows from experimentation; experimentation requires time."* But ABC's O&O stations have done no "experimentation" in access time. The past broken promises by PTAR's advocates deflate their new predictions. The trend of access programming is all downhill. That is illustrated by the following statistics as to the percentage of access entertainment time programmed with game shows and foreign imports:

	<u>1970-71</u>	<u>1971-72</u>	<u>1972-73</u>
Game Shows**	11.1%	22.8%	48.6%
Foreign***	0.1%	4.9%	20.3%

What is the prospect of a reversal of this trend?

ABC acknowledges (pp. 10,14) the future access programming "is likely to depend upon what these businessmen [producers of

* ABC Comments, July 12, 1972, p. 9; ABC's present Comments, p. 13.

** JA, Ex. 5, Table I.

*** JA, Table IV of Exs. 1, 1A and 1B.

access shows] consider the financial opportunities to be"; and that station selection of access shows "will dictate the course which producers and syndicators are likely to follow in the highly risky business of developing new product for first-run syndication." But why won't the economics which led to cheap games and foreign imports continue?

X

PTAR SHOULD BE REPEALED
FOR THE COMING SEASON

Immediate repeal for the coming season is critical. Continuation of PTAR will continue the injury to the public interest.

ABC argues that if PTAR is rescinded, the effective date should be delayed until October 1, 1974 because "lead time" is required to develop "better programming" (p. 54).

But, as shown in our principal comments (pp. 37-39), there is sufficient lead time for the season starting in October 1973 and certainly for the customary mid-season schedule changes in January 1974. Repeal would at most involve four hours of programming -- exactly the amount of programming which ABC just substituted in its January 1973 "second season".

Various proponents also claim that a year's delay in repeal is necessary in order to protect those who are producing for the access period. Who? Producers of the sixth episode of a game show being stripped on a network? Foreign producers? After all, game and foreign shows constitute 70% of syndicated access schedules. In any event, assuming that immediate repeal causes some economic dislocations for a few producers, that is certainly no justification for perpetuating a rule which injures the public interest. Several years ago, ABC stated in supporting PTAR:*

" . . . the real issue is not whether retention of the rule would result in some limited financial adjustments, of either a favorable or unfavorable kind. The Commission adopts many rules which have such effects. The real test is whether the rule is needed from the standpoint of the overall public interest."

XI

THE COMMISSION SHOULD REPLACE PTAR WITH REGULATIONS THAT OFFER A REASONABLE PROSPECT OF ACHIEV- ING ITS OBJECTIVES

The objectives of PTAR -- increasing diversity and decreasing network dominance -- are vital for the public interest. But it is apparent PTAR cannot foster those goals. It has been counter-productive.

* Reply of ABC to Petitions for Reconsideration, July 14, 1970, pp. 7-8 (footnotes omitted).

The process of networking, as explained in Wolper's Comments, is efficient and effective and permits the substantial expenditure of resources and creative efforts necessary for quality programming. But the vice is that three network management groups control access to the "funnel". The Commission should therefore consider regulations which would open up "access" to the networking process to all truly independent producers.

In addition, the Commission should consider action to encourage licensees to present more local programs by preempting or rescheduling network fare without fear of reprisals. PTAR, as shown above, has virtually put an end to such preemptions.

To achieve greater diversity and decrease network dominance, the Commission should also give more affirmative encouragement to the development of cable television, subscription methods and other new communication technologies. In its original support of PTAR, ABC argued:

"We believe that for the long run the diversity which the Commission seeks will better come from the full development of UHF and public broadcasting than from CATV (and Pay-TV), and that for the next few years, until they have been given a chance to develop, the preferable regulatory course is a Prime Time Access Rule, which will help them to develop."*

* ABC Reply to Petitions for Reconsideration, July 14, 1970, p. 10.

But now, two years later, PTAR has not added diversity or helped UHF or public broadcasting. ABC and PTAR's other principal proponents, however, continue to oppose alternative media because they offer competition. PTAR, in contrast, insulates their entrenched status.

CONCLUSION

In summary, we urge the Commission to repeal PTAR and take effective action aimed at the basic problems which have plagued the television industry for so many years. The core problem is and always has been three-network dominance. Unless that basic problem is squarely faced, the laudable goals sought by the Commission in the ill-fated PTAR experiment will remain elusive.

Respectfully submitted,

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March 12, 1973

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Consideration of the operation)
of, and possible changes in,) Docket No. 19622
the "prime time access rule,")
Section 73.658(k) of the)
Commission's Rules.)

TO: THE COMMISSION.

ERRATUM

The last two sentences on page eight of the Reply Comments of Warner Bros. Inc., dated March 12, 1973, should be corrected to reflect the following facts.

Those sentences indicate that NBC's O & O stations advanced production costs for the only new syndicated access program ("Primus") produced by Metromedia last season and that the program failed and was cancelled in the middle of the season. Those statements were based upon NBC's Principal Comments which state (p. 13):

"In order to obtain a dramatic first run syndicated series for use in the access period in the 1971-1972 season, NBC's owned stations advanced production costs to the producer."

The NBC Comments further state (p. 14) that the "series failed" and that NBC suffered a substantial loss. Exhibit 3 to NBC's Comments, listing all access programs on its O & O stations, indicates that "Primus" was the only dramatic show "replaced in January 1972." It thus appeared that "Primus" was the show referred to in NBC's Comments. That impression was reinforced by Metromedia's Comments which emphasized "the necessity" for an advance commitment from a network O & O group before producing an access show (Appendix V, pp. 1-2).

We have, however, recently been informed by Metromedia that the program referred to in NBC's Comments was not "Primus," but "Monty Nash" produced by Four Star. Accordingly, we request that the last two sentences on page eight of our Reply Comments be amended to reflect that fact.

Respectfully submitted,

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April 4, 1973

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
The Consideration of the Operation)
of, and Possible Changes in Section)
73.658 (k) (The "Prime Time Access)
Rule") of the Commission's Rules)

DOCKET NO. 19622

JOINT APPENDIX OF:

MCA Inc.
Paramount Pictures Corporation
Screen Gems, A Division Of Columbia
Pictures Industries, Inc.
Warner Bros. Television

January 15, 1973

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EXHIBIT 1 - Programming in access time periods by various categories over the past three seasons. Exhibit 1 refers to the current season, 1-A to the 71-72 season and 1-B to the 70-71 season. There are 14 tables:

- 1. Table I - 1972 - 1973, Total Access Programming By Type
Table II - 1972 - 1973, Entertainment Programs By Type
Table III - 1972 - 1973, Entertainment Programs By Genesis
Table IV - 1972 - 1973, Entertainment Programs By Place Of Production
Table V - 1972 - 1973, Entertainment Programs By Place Of Production
By Type
- 1A. Table I - 1971 - 1972, Total Access Programming By Type
Table II - 1971 - 1972, Entertainment Programs By Type
Table III - 1971 - 1972, Entertainment Programs By Genesis
Table IV - 1971 - 1972, Entertainment Programs By Place Of Production
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By Type
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By Type

EXHIBIT 2 - Ranking of the top 24 syndicated entertainment programs for the current season and last season, with a summary at 2-B, 2-C analyses the decline in program sources.

- 2. Table I - 1972 - 1973, Top 24 Syndicated Access Programs By No. Of
Half Hours Shown Per Week
Table II - 1972 - 1973, Top 24 Access Programs By No. Of Markets
Currently Showing
- 2A. Table I - 1971 - 1972, Top 24 Syndicated Access Programs By No. Of Half
Hours Shown Per Week
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2C.	Program Sources, 1970 - 71 and 1972 - 73 (4 Pages)
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<u>EXHIBIT 5</u>	- Summary Tables
5.	Table I - Three Year Comparison Of Entertainment Programs By Type
	Table II - Three Year Comparison Of Entertainment Programs By Medium
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<u>EXHIBIT 6</u>	- Monority Group Representation On U.S. Network Television
	Methodological Appendix

EXHIBIT 1 - TABLE I

1972 - 1973

TOTAL ACCESS PROGRAMMING BY TYPE

	<u>HALF HOURS</u>	
	<u>#</u>	<u>%</u>
TOTAL ENTERTAINMENT	1383	65.9%
LOCAL NEWS	393	18.7
NETWORK NEWS	<u>95</u>	<u>4.5</u>
<u>TOTAL NEWS</u>	488	23.2
LOCAL BLACK INTEREST*	5	.2
LOCAL SPORTS* & OTHER PROGRAMS	<u>130</u>	<u>6.2</u>
<u>TOTAL LOCAL INTEREST</u> (NON NEWS)	135	6.4
MOVIES	<u>94</u>	<u>4.5</u>
<u>TOTAL</u>	2100	100.0%

* WHERE IDENTIFIABLE BY TITLE

EXHIBIT 1 - TABLE II

1972 - 1973

ENTERTAINMENT PROGRAMS BY TYPE

	<u># OF HALF HOURS</u>	<u>%</u>
GAME	672	48.6%
DRAMA	228	16.5
VARIETY	255	18.4
TRAVEL/NATURE	98	7.1
COMEDY	24	1.7
CARTOON	59	4.3
MISCELLANEOUS	47	3.4
	<hr/>	<hr/>
<u>TOTAL</u>	1383	100.0%

EXHIBIT 1 - TABLE III

1972 - 1973

ENTERTAINMENT PROGRAMS BY GENESIS

	<u># OF HALF HOURS</u>	<u>%</u>
U.S. NET SERIES W/O CHANGES	697	50.4%
U.S. NETWORK SPAWNED*	83	5.0
U.S. NETWORK PILOT OR SPECIAL	61	4.4
FOREIGN NETWORK	244	17.6
	<hr/>	<hr/>
TOTAL NETWORK	1085	78.5
SYNDICATION		
AVAILABLE BEFORE RULE	269	19.4
AVAILABLE SINCE RULE	29	2.1
	<hr/>	<hr/>
TOTAL SYNDICATION	298	21.5
<u>TOTAL</u>	1383	100.0%

* FORMER NETWORK SHOW WITH TITLE OR MINOR FORMAT CHANGE

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EXHIBIT 1 - TABLE IV

1972 - 1973

ENTERTAINMENT PROGRAMS BY PLACE OF PRODUCTION

	<u># OF HALF HOURS</u>	<u>%</u>
UNITED STATES	987	71.4%
ABROAD	281	20.3
U.S. & ABROAD	115	8.3
<u>TOTAL</u>	<u>1383</u>	<u>100.0%</u>

EXHIBIT 1 - TABLE V

1972 - 1973

ENTERTAINMENT PROGRAMS BY PLACE OF PRODUCTION BY TYPE

	<u># OF HALF HOURS</u>	<u>%</u>
<u>GAME</u>		
U.S.	666	99%
U.S. & ABROAD	-	-
ABROAD	<u>6</u>	<u>1</u>
	672	100%
<u>DRAMA</u>		
U.S.	53	23
U.S. & ABROAD	6	3
ABROAD	<u>169</u>	<u>74</u>
	228	100%
<u>VARIETY</u>		
U.S.	202	79
U.S. & ABROAD	-	-
ABROAD	<u>53</u>	<u>21</u>
	255	100%
<u>NATURE/TRAVEL</u>		
U.S.	3	3
U.S. & ABROAD	78	80
ABROAD	<u>17</u>	<u>17</u>
	98	100%
<u>CARTOON</u>		
U.S.	28	47
U.S. & ABROAD	31	53
ABROAD	<u>-</u>	<u>-</u>
	59	100%
<u>MISCELLANEOUS</u>		
U.S.	26	55
U.S. & ABROAD	-	-
ABROAD	<u>21</u>	<u>45</u>
	47	100%
<u>COMEDY</u>		
U.S.	9	38
U.S. & ABROAD	-	-
ABROAD	<u>15</u>	<u>62</u>
	24	100%

EXHIBIT 1-A - TABLE I

1971 - 1972

TOTAL ACCESS PROGRAMMING BY TYPE

	<u>HALF HOURS</u>	
	<u>#</u>	<u>%</u>
OFF-NETWORK	475	22.6%
MADE FOR SYNDICATION	<u>812</u>	<u>38.7</u>
TOTAL ENTERTAINMENT	1287	61.3
LOCAL NEWS	377	18.0
NETWORK NEWS	<u>122</u>	<u>5.8</u>
<u>TOTAL NEWS</u>	499	23.8
LOCAL BLACK INTEREST*	3	.1
LOCAL SPORTS* & OTHER PROGRAMS	<u>164</u>	<u>7.8</u>
<u>TOTAL LOCAL INTEREST</u> (NON NEWS)	167	7.9
MOVIES	147	7.0
<u>TOTAL</u>	2100	100.0%

* WHERE IDENTIFIABLE BY TITLE

EXHIBIT 1-A - TABLE II

1971 - 1972

ENTERTAINMENT PROGRAMS BY TYPE

	<u># OF HALF HOURS</u>	<u>%</u>
GAME	294	22.8%
DRAMA	357	27.7
VARIETY	225	17.5
TRAVEL/NATURE	81	6.3
COMEDY	242	18.8
CARTOON	2	.2
MISCELLANEOUS	86	6.7
<u>TOTAL</u>	<u>1287</u>	<u>100.0%</u>

EXHIBIT 1-A - TABLE III

1971 - 1972

ENTERTAINMENT PROGRAMS BY GENESIS

	<u># OF HALF HOURS</u>	<u>%</u>
U.S. NET SERIES W/O CHANGES	884	68.7%
U.S. NETWORK SPAWNED*	40	3.1
U.S. NETWORK PILOT OR SPECIAL	-	-
FOREIGN NETWORK	35	2.7
	<hr/>	<hr/>
TOTAL NETWORK	959	74.5
SYNDICATION		
AVAILABLE BEFORE RULE	199	15.5
AVAILABLE SINCE RULE	129	10.0
	<hr/>	<hr/>
TOTAL SYNDICATION	328	25.5
<u>TOTAL</u>	1287	100.0%

* FORMER NETWORK SHOW WITH TITLE OR MINOR FORMAT CHANGE.

EXHIBIT 1-A - TABLE IV

1971 - 1972

ENTERTAINMENT PROGRAMS BY PLACE OR PRODUCTION

	<u># OF HALF HOURS</u>	<u>%</u>
U.S.	1089	84.6%
ABROAD	63	4.9
U.S. & ABROAD	135	10.5
	<hr/>	<hr/>
<u>TOTAL</u>	1287	100.0%

EXHIBIT 1-A - TABLE V

1971 - 1972

ENTERTAINMENT PROGRAMS BY PLACE OF PRODUCTION BY TYPE

	<u># OF HALF HOURS</u>	<u>%</u>
<u>GAME</u>		
U.S.	293	99.7%
U.S. & ABROAD	-	-
ABROAD	<u>1</u>	<u>.3</u>
	294	100.0%
<u>DRAMA</u>		
U.S.	284	79.6
U.S. & ABROAD	56	15.7
ABROAD	<u>17</u>	<u>4.8</u>
	357	100.1%
<u>VARIETY</u>		
U.S.	219	97.3
U.S. & ABROAD	-	-
ABROAD	<u>6</u>	<u>2.7</u>
	225	100.0%
<u>NATURE/TRAVEL</u>		
U.S.	2	2.5
U.S. & ABROAD	79	97.5
ABROAD	<u>-</u>	<u>-</u>
	81	100.0%
<u>CARTOON</u>		
U.S.	2	100.0
U.S. & ABROAD	-	-
ABROAD	<u>-</u>	<u>-</u>
	2	100.0%
<u>MISCELLANEOUS</u>		
U.S.	68	79.1
U.S. & ABROAD	-	-
ABROAD	<u>18</u>	<u>21.0</u>
	86	100.1%
<u>COMEDY</u>		
U.S.	221	91.3
U.S. & ABROAD	-	-
ABROAD	<u>21</u>	<u>8.7</u>
	242	100.0%

EXHIBIT 1-B - TABLE I

1970 - 1971

TOTAL "ACCESS" PROGRAMMING BY TYPE

	<u># OF HALF HOURS</u>	<u>%</u>
NETWORK	1137	54.1%
OFF-NETWORK	268	12.8
MADE FOR SYNDICATION	<u>132</u>	<u>6.3</u>
<u>TOTAL ENTERTAINMENT</u>	1537	73.2
LOCAL NEWS	327	15.6
NETWORK NEWS	<u>130</u>	<u>6.2</u>
<u>TOTAL NEWS</u>	457	21.8
LOCAL BLACK INTEREST*	-	-
LOCAL SPORTS* & OTHER PROGRAMS	<u>44</u>	<u>2.1</u>
<u>TOTAL LOCAL INTEREST</u> (NON NEWS)	44	2.1
MOVIES	62	3.0
<u>TOTAL</u>	2100	100.1%

*WHERE IDENTIFIABLE BY TITLE

ADDS TO OVER 100.0% DUE TO ROUNDING

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EXHIBIT 1-B - TABLE II

1970 - 1971

ENTERTAINMENT PROGRAMS BY TYPE

	<u># OF HALF HOURS</u>	<u>%</u>
GAME	170	11.1%
DRAMA	712	46.3
VARIETY	265	17.2
TRAVEL/NATURE	36	2.3
COMEDY	334	21.7
CARTOON	-	-
MISCELLANEOUS	20	1.3
	<hr/>	<hr/>
<u>TOTAL</u>	1537	99.9%*

*DOES NOT ADD TO 100.0% DUE TO ROUNDING

EXHIBIT 1-B - TABLE IV
1970 - 1971
ENTERTAINMENT PROGRAMS BY
PLACE OF PRODUCTION

	<u># OF HALF HOURS</u>	<u>%</u>
UNITED STATES	1497	97.4%
ABROAD	2	.1
U.S. & ABROAD	38	2.5
<u>TOTAL</u>	1537	100.0%

EXHIBIT 1-B - TABLE V

1970 - 1971

ENTERTAINMENT PROGRAMS BY PLACE OF PRODUCTION BY TYPE

	<u># OF HALF HOURS</u>	<u>%</u>
<u>GAME</u>		
U.S.	170	100.0%
U.S. & ABROAD	-	-
ABROAD	-	-
	<u>170</u>	<u>100.0%</u>
<u>DRAMA</u>		
U.S.	710	99.9
U.S. & ABROAD	-	-
ABROAD	<u>1</u>	<u>.1</u>
	711	100.0%
<u>VARIETY</u>		
U.S.	271	100.0
U.S. & ABROAD	-	-
ABROAD	-	-
	<u>271</u>	<u>100.0%</u>
<u>NATURE/TRAVEL</u>		
U.S.	1	.3
U.S. & ABROAD	35	99.4
ABROAD	<u>1</u>	<u>.3</u>
	37	100.0%
<u>MISCELLANEOUS</u>		
U.S.	14	100.0
U.S. & ABROAD	-	-
ABROAD	-	-
	<u>14</u>	<u>100.0%</u>
<u>COMEDY</u>		
U.S.	331	99.1
U.S. & ABROAD	3	.9
ABROAD	-	-
	<u>334</u>	<u>100.0%</u>

EXHIBIT 2 - TABLE I

1972 - 1973

TOP 24 SYNDICATED ACCESS PROGRAMS BY

NUMBER OF HALF HOURS SHOWN PER WEEK

<u>RANK</u>	<u>TITLE</u>	<u># 1/2 HRS. PER WEEK</u>	<u>% OF SYNDICATED ENTERTAINMENT PGMS.</u>
1.	TO TELL THE TRUTH	167	12.1%
2.	TRUTH OR CONSEQUENCES	166	12.0
3.	WHAT'S MY LINE	92	6.7
4.	HEE HAW	67	4.8
5.	LAWRENCE WELK	64	4.6
6.	UFO	62	4.5
7.	LET'S MAKE A DEAL	48	3.5
7.	HOLLYWOOD SQUARES	48	3.5
9.	PARENT GAME	46	3.3
10.	WILD KINGDOM	41	3.0
11.	PROTECTORS, THE	39	2.8
12.	CIRCUS	37	2.7
13.	NEW PRICE IS RIGHT	35	2.5
14.	YOUNG DR. KILDARE	32	2.3
15.	WAIT TILL/HOME	31	2.2
16.	POLICE SURGEON	30	2.2
17.	BEAT THE CLOCK	26	1.9
18.	MERV GRIFFIN	24	1.7
18.	I'VE GOT A SECRET	24	1.7
20.	THIS IS YOUR LIFE	23	1.7
21.	AMAZING WORLD OF KRESKIN	20	1.4
22.	ADVENTURER, THE	19	1.4
22.	MOUSE FACTORY	19	1.4
24.	LASSIE	16	1.2
24.	HALF GEORGE KIRBY HOUR	16	1.2
TOP 25 AS A % OF SYNDICATED ENTERTAINMENT PROGRAMS		1192	86.2
ALL OTHERS (36)		191	13.8
TOTAL		1383	100.0%

EXHIBIT 2 - TABLE II

1972 - 1973

TOP 24 ACCESS PROGRAMS BY NO. OF

MARKETS CURRENTLY SHOWING

<u>RANK</u>	<u>TITLE</u>	<u># MARKETS</u>	<u>% MARKET COVERAGE</u>
1.	HOLLYWOOD SQUARES	48	96%
2.	LET'S MAKE A DEAL	47	94
3.	PARENT GAME	46	92
4.	WILD KINGDOM	41	82
5.	PROTECTORS, THE	39	78
6.	CIRCUS	37	74
7.	HEE HAW	35	70
7.	NEW PRICE IS RIGHT	35	70
7.	TO TELL THE TRUTH	35	70
7.	UFO	35	70
11.	TRUTH OR CONSEQUENCES	34	68
12.	LAWRENCE WELK	33	66
13.	YOUNG DR. KILDARE	32	64
14.	WAIT TILL/HOME	31	62
15.	POLICE SURGEON	30	60
16.	I'VE GOT A SECRET	24	48
17.	THIS IS YOUR LIFE	23	46
18.	WHAT'S MY LINE	21	42
19.	AMAZING WORLD OF KRESKIN	20	40
20.	ADVENTURER, THE	19	38
20.	MOUSE FACTORY	19	38
22.	HALF GEORGE KIRBY HOUR	16	32
22.	LASSIE	16	32
24.	YOU ASKED FOR IT	15	30

EXHIBIT 2-A - TABLE I

1971 - 1972

TOP 24 SYNDICATED ACCESS PROGRAMS BY

NUMBER OF HALF HOURS SHOWN PER WEEK

<u>RANK</u>	<u>TITLE</u>	<u># 1/2 HRS. PER WEEK</u>	<u>% OF SYNDICATED ENTERTAINMENT PGMS.</u>
1.	TRUTH OR CONSEQUENCES	91	7.1%
2.	TO TELL THE TRUTH	73	5.7
3.	HEE HAW	62	4.8
4.	I DREAM OF JEANNIE	60	4.7
5.	LAWRENCE WELK	51	4.0
6.	DRAGNET	45	3.5
7.	WHAT'S MY LINE	43	3.3
8.	PRIMUS	42	3.3
9.	LASSIE	36	2.8
10.	LET'S MAKE A DEAL	35	2.7
10.	THIS IS YOUR LIFE	35	2.7
12.	HIGH CHAPARRAL	33	2.6
13.	NATIONAL GEOGRAPHIC	32	2.5
14.	KENNY ROGERS	30	2.3
14.	BIG VALLEY	30	2.3
14.	GOLDDIGGERS	30	2.3
17.	ANDY GRIFFITH	29	2.3
17.	WILD KINGDOM	29	2.3
19.	IT TAKES A THIEF	27	2.1
20.	HOGAN'S HEROES	24	1.9
21.	PETTICOAT JUNCTION	23	1.8
22.	JOHNNY MANN	22	1.7
23.	DOCTOR IN THE HOUSE	21	1.6
24.	JUVENILE JURY	19	1.5
TOP 24 AS A % OF SYNDICATED ENTERTAINMENT PROGRAMS		922	71.6
ALL OTHERS (68)		365	28.4
TOTAL		1287	100.0 %

EXHIBIT 2-A - TABLE II

1971 - 1972

TOP 24 ACCESS PROGRAMS BY NO. OF

MARKETS

<u>RANK</u>	<u>TITLE</u>	<u># MARKETS</u>	<u>% MARKET COVERAGE</u>
1	PRIMUS	42	84%
2	LASSIE	36	72
3	THIS IS YOUR LIFE	35	70
3	LET'S MAKE A DEAL	35	70
5	HEE HAW	33	66
6	GOLDDIGGERS	30	60
6	KENNY ROGERS	30	60
8	WILD KINGDOM	29	58
9	LAWRENCE WELK	27	54
10	JOHNNY MANN	22	44
11	DOCTOR IN THE HOUSE	21	42
11	TRUTH OR CONSEQUENCES	21	42
13	JUVENILE JURY	19	38
13	DRAGNET	19	38
15	CIRCUS	18	36
16	DAVID FROST REVUE	17	34
16	TO TELL THE TRUTH	17	34
18	NATIONAL GEOGRAPHIC	16	32
19	MONTY NASH	15	30
19	I DREAM OF JEANNIE	15	30
20	SIMON LOCKE	13	26
20	IT TAKES A THIEF	13	26
21	WHAT'S MY LINE	10	20
21	GREEN ACRES	10	20

EXHIBIT 2-B - SUMMARY

RELATIONSHIP OF TOP 24 ACCESS PROGRAMS TO ALL ACCESS HALF HOURS

	<u>1972 - 1973</u>		<u>1971 - 1972</u>		<u>1970 - 1971</u>	
		<u>%</u>		<u>%</u>		<u>%</u>
Total number of $\frac{1}{2}$ hours of top 24 entertainment programs.	1192	86.2	922	71.6	1190	77.4
Total number of $\frac{1}{2}$ hours for all other entertainment programs.	191	13.8	365	28.4	347	22.6
	—	—	—	—	—	—
Total number of $\frac{1}{2}$ hours of entertainment programs.	1383	100%	1287	100%	1537	100%

EXHIBIT 2-C - TABLE I

SUMMARY OF PROGRAM SOURCES DURING ACCESS TIME

1970 - 1971 THROUGH CURRENT SEASON

	<u>1972 - 1973</u>	<u>1971 - 1972</u>	<u>1970 - 1971</u>
NUMBER OF PROGRAMS	61	92	98
PERCENT +/- 1970	-38%	-6%	-
NUMBER OF PRODUCERS	43	54	54
PERCENT +/- 1970	-19%	-	-

PRODUCERS OUT SINCE ACCESS RULE: 32

PRODUCERS GAINED SINCE ACCESS RULE: 21

NET LOSS: 11

EXHIBIT 2-C - TABLE II

PROGRAM SOURCES DURING ACCESS TIME

1970 - 1971 THROUGH CURRENT SEASON

1972 - 1973

ATV
GOODSON - TODMAN
BUCK OWENS PRODS.
GROUP W
MADISON PRODS.
NTA
YOUNGSTREET PRODS.
IT'S ACADEMIC
WRATHER CORP.
TELEKLEIU PRODS.
HATOS - HALL ENT.
MPC
MORT NEFF
SHOW BIZ INC. OF NASHVILLE
NFL FILMS
FOUR STAR PRODS.
RALPH EDWARDS PRODS.
DON MEIER PRODS.
BILL BURRUD PRODS.
LONDON WEEKEND TV
RANKIN & BASS PRODS.
GREG GARRISON PRODS.
WINTERS - ROSEN PRODS.
HEATTER - QUIGLEY PRODS.
TIME LIFE FILMS
BAY PROMOTIONS
COBURT PRODS.
JOE CATES PRODS.
HANNA - BARBERA PRODS.
BUSHNELL COMM. OF CANADA
WALT DISNEY PRODS.
CHUCK BARRIS PRODS.
MGM

1971 - 1972

ATV
GOODSON - TODMAN
BUCK OWENS PRODS.
GROUP W
MADISON PRODS.
NTA
YOUNGSTREET PRODS.
IT'S ACADEMIC
WRATHER CORP.
TELEKLEIU PRODS.
HATOS - HALL ENT.
MPC
MORT NEFF
SHOW BIZ INC. OF NASHVILLE
NFL FILMS
FOUR STAR PRODS.
RALPH EDWARDS PRODS.
DON MEIER PRODS.
BILL BURRUD PRODS.
LONDON WEEKEND TV
RANKIN & BASS PRODS.
GREG GARRISON PRODS.
WINTERS - ROSEN PRODS.
HEATTER - QUIGLEY PRODS.
TIME LIFE FILMS
BAY PROMOTIONS
COBURT PRODS.
JOE CATES PRODS.
HANNA - BARBERA PRODS.
BUSHNELL COMM. OF CANADA
SCREEN GEMS
20TH CENTURY FOX
UNITED ARTISTS

1970 - 1971

ATV
GOODSON - TODMAN
BUCK OWENS PRODS.
GROUP W
MADISON PRODS.
NTA
YOUNGSTREET PRODS.
IT'S ACADEMIC
WRATHER CORP.
TELEKLEIU PRODS.
HATOS - HALL ENT.
MPC
MORT NEFF
SHOW BIZ INC. OF NASHVILLE
NFL FILMS
FOUR STAR PRODS.
RALPH EDWARDS PRODS.
DON MEIER PRODS.
BILL BURRUD PRODS.
WALT DISNEY PRODS.
CHUCK BARRIS PRODS.
MGM
SCREEN GEMS
20TH CENTURY FOX
UNITED ARTISTS
CBS
MARK VII LTD.
FILMWAYS
XANADU PRODS.
LUCILLE BALL PRODS.
SHELDON LEONARD ENT.
UNIVERSAL
AVCO BROADCASTING

EXHIBIT 2-C - TABLE II

PROGRAM SOURCES DURING ACCESS TIME

1970 - 1971 THROUGH CURRENT SEASON (CONT'D)

1972 - 1973

AMERICAN ADVENTURE
KEG PRODS.
CAMPBELL - EWALD ADV.
EBC - TV
ALLIED ARTISTS
WOLPER PRODS.
NIC PRODS.
ANGLIA LTD.
GEORGE BAGNELL ASSOC.
YOU ASKED FOR IT PRODS.

1971 - 1972

CBS
MARK VII LTD.
FILMWAYS
XANADU PRODS.
LUCILLE BALL PRODS.
SHELDON LEONARD ENT.
UNIVERSAL
AVCO BROADCASTING
TALENT ASSOC.
MIRISCH - RICH TV PRODS.
NBC
PARAMOUNT
RORVIC PRODS.
MAYBERRY PRODS.
ASSOC. BRITISH PATHE
JEMMIN CO.
BING CROSBY PRODS.
JOE LANDIS
NORMAN CRAIG & KUMMEL
JACKIT PRODS.
STOKEY ENT.

1970 - 1971

TALENT ASSOC.
MIRISCH - RICH TV PRODS.
NBC
PARAMOUNT
RORVIC PRODS.
BARNABY PRODS.
QUINN - MARTIN PRODS.
SULLIVAN PRODS.
DON FEDDERSON PRODS.
IVAN TORS PRODS.
WARNER BROTHERS
LEONARD FREEMAN PRODS.
WILLIAM MORRIS AGENCY
ODYSSEY PRODS.
THOMAS - SPELLING PRODS.
DESI ARNAZ PRODS.
OLAS CORP.
VAN BERNARD PRODS.
MURL DEVISING FILM PRODS.
SECRET CHALLENGE
DAISY PRODS.

EXHIBIT 3

TV-Q ANALYSIS

	<u>AVERAGE TV-Q SCORE</u>
1972 - 73 TOP 24 ACCESS SHOWS	24
1972 - 73 NETWORK SHOWS ADJACENT TO ACCESS	30
NETWORK ADVANTAGE	+25%

TV-Q is a measure of program popularity. A national sample of viewers age 6 and over are asked whether each program is "one of my favorites", "good", "fair", "poor" or "never seen". The number of "favorites" divided by the total less "never seen" produces the Q score -- a measure of inherent program appeal which holds viewing levels constant.

Current network shows adjacent to access shows average a Q score of 30, 25% higher than the average of 22 of the top 24 access programs (TV Q is not available for the other 2).

SOURCE: TV-Q SEPTEMBER - OCTOBER 1972

EXHIBIT 4

1971 - 1972

ACCESS PROGRAMMING - SUBSTANTIAL COMPLIANCE

We analyzed access programming for the 1971-1972 season using the ARB November 1971 sweep as our source. Of the 2100 half hours, 1625 were programmed with first run syndication or other acceptable material, and 475 with off-network repeats. Thus the compliance level in the first season was 77.4% in spite of the FCC waiver. If the programming were weighted by market size, the compliance percentage would be higher still.

	<u>#</u>	<u>%</u>
TOTAL OF HALF HOURS	2100	100.0%
FIRST RUN SYNDICATION AND NEWS HALF HOURS	1625	77.4%
OFF-NETWORK REPEAT HALF HOURS	475	22.6%

EXHIBIT 5 - SUMMARY TABLE I

THREE YEAR COMPARISON OF ENTERTAINMENT PROGRAMS BY TYPE

	<u>1972 - 1973</u>		<u>1971 - 1972</u>		<u>1970 - 1971</u>	
	<u># OF HALF HOURS</u>	<u>%</u>	<u># OF HALF HOURS</u>	<u>%</u>	<u># OF HALF HOURS</u>	<u>%</u>
GAME	672	48.6%	294	22.8%	170	11.1%
DRAMA	228	16.5	357	27.7	712	46.3
VARIETY	255	18.4	225	17.5	265	17.2
NATURE/TRAVEL	98	7.1	81	6.3	36	2.3
CARTOON	59	4.3	2	.2	-	-
COMEDY	24	1.7	242	18.8	334	21.7
MISCELLANEOUS	47	3.4	86	6.7	20	1.3
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
TOTAL	1383	100.0%	1287	100.0%	1537	99.9%*

*DOES NOT ADD TO 100.0% DUE TO ROUNDING

EXHIBIT 5 - SUMMARY TABLE II

THREE YEAR COMPARISON OF ENTERTAINMENT PROGRAMS BY MEDIUM

	<u>1972 - 1973</u>		<u>1971 - 1972</u>		<u>1970 - 1971</u>	
	<u># OF HALF HOURS</u>	<u>%</u>	<u># OF HALF HOURS</u>	<u>%</u>	<u># OF HALF HOURS</u>	<u>%</u>
TAPE	991	71.7%	602	46.8%	396	25.8%
LIVE	3	.2	2	.2	2	.1
FILM -						
NEW AMERICAN	81	5.9	73	5.7	898	58.4
NEW FOREIGN	186	13.4	13	1.0	2	.1
NEW AMERICAN/FOREIGN	40	2.9	22	1.7	7	.5
EXISTING FOOTAGE	82	5.9	41	3.2	26	1.7
OFF NETWORK REPEATS	-	-	534	41.5	206	13.4
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
TOTAL FILM	389	28.1	683	53.1	1139	74.1
TOTAL	1383	100.0%	1287	100.1%*	1537	100.0%

*DOES NOT ADD TO 100.0% DUE TO ROUNDING

EXHIBIT 5 - SUMMARY TABLE III

THREE YEAR COMPARISON OF ENTERTAINMENT PROGRAMS BY PLACE OF PRODUCTION BY TYPE

	<u>1972 - 1973</u>		<u>1971 - 1972</u>		<u>1970 - 1971</u>	
	<u># OF HALF HOURS</u>	<u>%</u>	<u># OF HALF HOURS</u>	<u>%</u>	<u># OF HALF HOURS</u>	<u>%</u>
<u>GAME</u>						
U.S.	666	99.1%	293	99.7%	170	100.0%
U.S. & ABROAD	-	-	-	-	-	-
ABROAD	<u>6</u>	<u>.9</u>	<u>1</u>	<u>.3</u>	<u>-</u>	<u>-</u>
	672	100.0%	294	100.0%	170	100.0%
<u>DRAMA</u>						
U.S.	53	23.2	284	79.6	710	99.9
U.S. & ABROAD	6	2.6	56	15.7	-	-
ABROAD	<u>169</u>	<u>74.2</u>	<u>17</u>	<u>4.8</u>	<u>1</u>	<u>.1</u>
	228	100.0%	357	100.1%*	711	100.0%
<u>VARIETY</u>						
U.S.	202	79.2	219	97.3	271	100.0%
U.S. & ABROAD	-	-	-	-	-	-
ABROAD	<u>53</u>	<u>20.8</u>	<u>6</u>	<u>2.7</u>	<u>-</u>	<u>-</u>
	255	100.0%	225	100.0%	271	100.0%

(CONTINUED)

EXHIBIT 5 - SUMMARY TABLE III (CONT'D)

THREE YEAR COMPARISON OF ENTERTAINMENT PROGRAMS BY PLACE OF PRODUCTION BY TYPE

	<u>1972 - 1973</u>		<u>1971 - 1972</u>		<u>1970 - 1971</u>	
	<u># OF HALF HOURS</u>	<u>%</u>	<u># OF HALF HOURS</u>	<u>%</u>	<u># OF HALF HOURS</u>	<u>%</u>
<u>NATURE/TRAVEL</u>						
U.S.	3	3.1%	2	2.5%	1	.3%
U.S. & ABROAD	78	79.6	79	97.5	35	99.4
ABROAD	<u>17</u>	<u>17.3</u>	<u>-</u>	<u>-</u>	<u>1</u>	<u>.3</u>
	98	100.0%	81	100.0%	37	100.0%
<u>CARTOON</u>						
U.S.	28	47.5	2	100.0	-	-
U.S. & ABROAD	31	52.5	-	-	-	-
ABROAD	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
	59	100.0%	2	100.0%	-	-
<u>MISCELLANEOUS</u>						
U.S.	26	55.3	68	79.1	14	100.0
U.S. & ABROAD	-	-	-	-	-	-
ABROAD	<u>21</u>	<u>44.7</u>	<u>18</u>	<u>21.0</u>	<u>-</u>	<u>-</u>
	47	100.0%	86	100.1%*	14	100.0%
<u>COMEDY</u>						
U.S.	9	37.5	221	91.3	331	99.1%
U.S. & ABROAD	-	-	-	-	3	.9
ABROAD	<u>15</u>	<u>62.5</u>	<u>21</u>	<u>8.7</u>	<u>-</u>	<u>.9</u>
	24	100.0%	242	100.0%	334	100.0%

* DOES NOT ADD TO 100.0% DUE TO ROUNDING

EXHIBIT 6

1972 - 1973

MINORITY GROUP REPRESENTATION ON NETWORK TV

PROGRAMS WITH MINORITY TALENT
IN LEADING ROLES

	<u>TYPICAL # $\frac{1}{2}$ HRS. PER WK.</u>
BILL COSBY	2
FLIP WILSON	2
SANFORD AND SON	1
THE ROOKIES	2
TEMPERATURES RISING	1
MOD SQUAD	2
ROOM 222	1
MISSION IMPOSSIBLE	2
HAWAII 5-0	<u>2</u>
	15

PROGRAMS WITH MINORITY TALENT IN
REGULAR SUPPORTING ROLES

	<u>TYPICAL # $\frac{1}{2}$ HRS. PER WK.</u>
ANNA AND THE KING	1
MANNIX	2
LAUGH-IN	2
BONANZA	2
SEARCH	2
IRONSIDE	2
BRIDGET LOVES BERNIE	1
MAUDE	1
McCLOUD	1
ALL IN THE FAMILY	1
LITTLE PEOPLE	1
KUNG FU	<u>1</u>
	17

A typical week contains 8 1/2 half hours of regularly scheduled prime time network programs, excluding movies, anthologies, news and sports. 32 half hours, or 39%, have minority group talent in regular roles.

METHODOLOGICAL APPENDIX

I DEFINITIONS:

- A. PRIME TIME: 7 - 11 PM EST and PST; 6 - 10 PM CST and MST.
- B. ACCESS TIME: For 1972 - 73, 7 - 8 PM Monday through Saturday for all affiliates. On Sunday, 7 - 7:30 PM and 10:30 - 11 PM for CBS and NBC affiliates, and 7 - 8 PM for ABC affiliates.

For 1971 - 72, 7 - 8 PM Monday, Wednesday, Thursday, Friday and Saturday for all affiliates, 7 - 7:30 PM Tuesday and Sunday for all affiliates, 10:30 - 11 PM Sunday for CBS affiliates, 10:30 - 11 PM Tuesday for NBC and CBS affiliates, 10:30 - 11 PM Friday for NBC affiliates, 7 - 8 PM Sunday for ABC affiliates.

For 1970 - 71, prior to the access rule, we have used the current season access time periods in showing comparative data.

All time periods given are for EST and PST, and are one hour earlier in CST and MST markets.

II UNIVERSE AND COMPUTATIONAL METHODS:

- A. UNIVERSE: The universe measured is the programming on the 150 network affiliated stations in the 50 markets covered by the FCC Prime Time Access Rule (Section 73.658 (k)) which was broadcast during the time periods covered by the rule (see definition above). The universe equals exactly 2100 half hours, (2 half hours per day x 7 days x 3 stations x 50 markets = 2100 half hours) during a typical broadcast week, and includes all programming in the defined time periods. (1)
- B. SOURCES: For the current (72-73) season, we used as a source the American Research Bureau's October "sweep" of the Top 33 markets. These reports covered four weeks of programming from September 20 - October 17, 1972. In some cases, these data were checked against TV-Guide for later weeks. For markets below the top 33, TV-Guide for various weeks was our source.

For the 1971 - 1972 and 1970 - 1971 seasons, the ARB full sweep for November was used as the source of program information.

¹
EXCEPTION: In cases where a network program was carried by a station in access time, the syndicated or local program which appears in the network show's time period was counted as access programming. This occurred mainly in Pacific markets which carry ABC Monday night football live and in the two Mountain time zone markets - Denver and Salt Lake City - which have irregular network feed patterns.

- C. TOP 24 PROGRAMS: The choice of 24 programs in the ranking tables was not arbitrary; the number was selected to provide comparability with the pre-access rule situation. Each network was forced to cancel 8 half hours of programming per week, hence the ranking of the Top 24 Syndicated programs in access time.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
The Consideration of the Operation)
of, and Possible Changes in Section)
73.658 (k) (The "Prime Time Access)
Rule") of the Commission's Rules)

DOCKET NO. 19622

SUPPLEMENTAL JOINT APPENDIX OF:

MCA Inc.
Paramount Pictures Corporation
Screen Gems, A Division Of Columbia
Pictures Industries, Inc.
Warner Bros. Television

March 12, 1973

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STRAIGHT RENTAL

EXHIBIT 7 - TABLE I

PROGRAMMING FOR THE ABC OWNED AND OPERATED
STATION IN NEW YORK

	<u>WABC-TV</u> <u>OCTOBER 1972</u>
MON. - 7-7:30 7:30-8 8:30-9	NET. NEWS SURVIVAL
TUES. - 7-7:30 7:30-8	NET. NEWS SAFARI
WED. - 7-7:30 7:30-8	NET. NEWS PARENT GAME
THURS. - 7-7:30 7:30-8	NET. NEWS BLACK BEAUTY
FRI. - 7-7:30 7:30-8	NET. NEWS LET'S MAKE A DEAL
SAT. - 7-7:30 7:30-8	LOCAL NEWS EXPLORERS
SUN. - 7-7:30 7:30-8	FAMILY CLASSIC GEORGE KIRBY

EXHIBIT 7 - TABLE II

PROGRAMMING FOR THE ABC OWNED AND OPERATED
STATION IN LOS ANGELES

KABC-TV
OCTOBER 1972

MON. - 7-7:30	
7:30-8	
8:30-9	
10-10:30	DEPARTMENT S
10:30-11	DEPARTMENT S
TUES. - 7-7:30	LOCAL MOVIE *
7:30-8	LOCAL MOVIE
WED. - 7-7:30	LOCAL MOVIE *
7:30-8	LOCAL MOVIE
THURS. - 7-7:30	LOCAL MOVIE *
7:30-8	LOCAL MOVIE
FRI. - 7-7:30	LOCAL MOVIE *
7:30-8	LOCAL MOVIE
SAT. - 7-7:30	PARENT GAME
7:30-8	LET'S MAKE A DEAL
SUN. 7 7 30	LOCAL NEWS
7 30 8	NEWS AT 8

* MOVIES WERE PRESENTED IN THIS TIME PERIOD PRIOR TO PTAR.

EXHIBIT 7 - TABLE III

PROGRAMMING FOR THE ABC OWNED AND OPERATED
STATION IN CHICAGO

	<u>WLS</u> <u>OCTOBER 1972</u>
MON. - 6-6:30 6:30-7	LOCAL NEWS* LOCAL NEWS
TUES. - 6-6:30 6:30-7	LOCAL NEWS* LOCAL NEWS
WED. - 6-6:30 6:30-7	LOCAL NEWS* LOCAL NEWS
THURS. - 6-6:30 6:30-7	LOCAL NEWS* LOCAL NEWS
FRI. - 6-6:30 6:30-7	LOCAL NEWS* LOCAL NEWS
SAT. - 6-6:30 6:30-7 9:30-10	LOCAL NEWS* LET'S MAKE A DEAL
SUN. - 6-6:30 6:30-7	PARENT GAME GEORGE KIRBY

* LOCAL NEWS WAS PRESENTED IN THIS TIME PERIOD PRIOR TO PTAR AND THE 6:30 PM HALF HOUR OF LOCAL NEWS WAS SHIFTED FROM AN EARLIER TIME PERIOD.

EXHIBIT 7 - TABLE IV

PROGRAMMING FOR THE ABC OWNED AND OPERATED
STATION IN DETROIT

WXYZ
OCTOBER 1972

MON. - 6:30-7 7-7:30 7:30-8	TO TELL THE TRUTH LET'S MAKE A DEAL
TUES. - 7-7:30 7:30-8	TO TELL THE TRUTH PARENT GAME
WED. - 7-7:30 7:30-8	TO TELL THE TRUTH WILD KINGDOM
THURS. - 7-7:30 7:30-8	TO TELL THE TRUTH GEORGE KIRBY
FRI. - 7-7:30 7:30-8	TO TELL THE TRUTH WAIT TILL FATHER
SAT. - 7-7:30 7:30-8	MICHIGAN OUTDOORS TOWN MEETING
SUN. - 7-7:30 7:30-8	LOCAL MOVIE LOCAL MOVIE

EXHIBIT 7 - TABLE V

PROGRAMMING FOR THE ABC OWNED AND OPERATED
STATION IN SAN FRANCISCO

KGO
OCTOBER 1972

MON. - 7-7:30	
7:30-8	
8:30-9	
10-10:30	DEPARTMENT S
10:30-11	DEPARTMENT S
TUES. - 7-7:30	LOCAL MOVIE *
7:30-8	LOCAL MOVIE
WED. - 7-7:30	LOCAL MOVIE *
7:30-8	LOCAL MOVIE
THURS. - 7-7:30	LOCAL MOVIE *
7:30-8	LOCAL MOVIE
FRI. - 7-7:30	LOCAL MOVIE *
7:30-8	LOCAL MOVIE
SAT. - 7-7:30	HOLLYWOOD SQUARES
7:30-8	LET'S MAKE A DEAL
SUN. - 7-7:30	CALL OUT
7:30-8	PARENT GAME

* MOVIES WERE PRESENTED IN THIS TIME PERIOD PRIOR TO PTAR.

EXHIBIT 8

DETAILED LIST OF THE 61 SYNDICATED ENTERTAINMENT PROGRAMS IN ACCESS TIME

(RANKED BY NUMBER OF HALF HOURS SHOWN PER WEEK)

1972 - 1973 SEASON

<u>PROGRAM</u>	<u>PRODUCER</u>	<u>% OF ENT. PGMS. IN ACC. TIME</u>	<u># OF HRS.</u>	<u># OF MKTS.</u>	<u>BARTER VS. NON-BARTER</u>	<u>NEW DOM.* SYND. PGMS. SINCE PTAR</u>	<u>TYPE</u>
1. TO TELL THE TRUTH	GOODSON/TODMAN	12.1	167	35	NB		GAME
2. TRUTH OR CONSEQUENCES	RALPH EDWARDS	12.0	166	34	NB		GAME
3. WHAT'S MY LINE	GOODSON/TODMAN	6.7	92	21	NB		GAME
4. HEE HAW	YOUNGSTREET	4.8	67	35	NB		VAR.
5. LAWRENCE WELK	TELEKLIU	4.6	64	33	B		MUS/VAR
6. UFO**	ATV	4.5	62	35	NB		DRAMA
7. HOLLYWOOD SQUARES	FEATTER/QUIGLEY	3.5	48	48	NB		GAME
8. LET'S MAKE A DEAL	KATOS-HALL	3.5	48	47	NB		GAME
9. PARENT GAME	CHUCK BARRIS	3.1	46	46	NB		GAME
10. WILD KINGDOM**	JOHN MEIER	3.0	41	41	B		NAT.
11. THE PROTECTORS**	ATV	2.8	39	39	B		DRAMA
12. CIRCUS**	JOE CATES	2.7	37	37	NB		CIRCUS
13. NEW PRICE IS RIGHT	GOODSON/TODMAN	2.5	35	35	NB		GAME
14. YOUNG DR. KILDARE	MGM-TV	2.3	32	32	B		DRAMA
15. WAIT 'TILL YOUR FATHER GETS HOME**	HANNA-BARBERA	2.2	31	31	NB		CART.
16. POLICE SURGEON**	FOUR-STAR	2.2	30	30	B		DRAMA
17. BEAT THE CLOCK	GOODSON/TODMAN	1.9	26	6	NB		GAME
18. I'VE GOT A SECRET	GOODSON/TODMAN	1.7	24	24	NB		GAME
19. MERV GRIFFIN	MERV GRIFFIN/MPC	1.7	24	3	NB		TALK SH.
20. THIS IS YOUR LIFE	RALPH EDWARDS	1.7	23	23	B		PERSON.
21. AMAZING WORLD OF KRESKIN**	BUSHNELL COMM.	1.4	20	20	NB		AUD. PART.
22. THE ADVENTURER**	ATV	1.4	19	19	B		DRAMA
23. MOUSE FACTORY	WALT DISNEY	1.4	19	19	NB		VAR/CART.
24. LASSIE	WRATHER CORP.	1.2	16	16	B		DRAMA
25. HALF GEORGE KIRBY HOUR**	WINTERS/ROSEN	1.2	16	16	NB		VAR.
26. YOU ASKED FOR IT	YOU ASKED FOR IT	1.1	15	15	NB		VAR.
	PRODS./MARKEDON						

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PROGRAM	PRODUCER	% OF ENT. PGMS. IN ACC. TIME	# OF HRS.	# OF MKTS.	BARTER VS. NON-BARTER	NEW DOM.* SYND. PGMS. SINCE PTAR	TYPE
27. DR. IN THE HOUSE**	LONDON WEEKEND TV	.9	13	13	NB		COM.
28. EXPLORERS**	WOLPER TV SALES	.87	12	12	NB		NAT.
29. IT'S YOUR BET	PRODS /JACK RHODES PRODS.	.80	11	3	NE		GAME
30. STAND UP & CHEER (JOHNNY MANN)	DOUBERT PRODS.	.80	11	11	B		VAR.
31. EVIL TOUCH**	ALLIED ARTISTS	.72	10	10	NB		MYST.
32. GOLDDIGGERS	GREG GARRISON	.72	10	10	B		VAR.
33. SURVIVAL**	SURVIVAL-OBG- ANGLIA LTD.	.65	9	9	B		NAT.
34. FAMILY CLASSICS	RANKIN & BASS	.65	9	8	NB		CART.
35. SAFARI TO ADVENTURE**	BILL BURRUD PRODS.	.58	8	8	B		NAT.
36. AUDABON WILDLIFE THEATRE**	REG PRODS. LTD.	.58	8	7	NB		NAT.
37. UNTAMED WORLD**	MPC	.51	7	7	B		NAT.
38. NASHVILLE SOUND	SHOW BIZ INC. OF NASHVILLE	.51	7	7	NB	X	MUS/VAR.
39. ANYTHING YOU CAN DO**	DON REID PRODS./ BUSHNELL COMM. OF CANADA	.43	6	6	NB		GAME
40. THRILL SEEKERS**	FOUR-STAR ENT. CORP.	.43	6	5	NB		ADV.
41. BLACK BEAUTY**	LONDON WEEKEND TV/ FREEMANTLE EUR. CO.	.43	6	6	B		DRAMA
42. DEATH VALLEY DAYS	MADISON PRODS.	.36	5	5	B		WESTERN
43. DAVID FROST REVUE	GROUP W & DAVID PARADINE PRODS.	.36	5	5	NB		COMEDY
44. COMEDY WITH JONATHAN WINTERS	CAMPBELL-EWALD	.29	4	4	B		COMEDY
45. LIFE AROUND US**	TIME-LIFE FILMS	.22	3	3	NB		NAT.
46. IT'S ACADEMIC		.22	3	3	NB		FORMAT
47. HENRY MANCINI SHOW	BURT SUGARMAN/ CAMPBELL-EWALD	.22	3	2	B	X	MUS/VAR.
48. NFL GAME OF THE WEEK	NFL FILMS	.14	2	2	NB		SPORTS
49. NATIONAL GEOGRAMA**	TIME-LIFE FILMS	.14	2	1	NB		TRAVEL
50. ON THE BUSES**	LONDON WEEKEND TV	.14	2	2	NB		COMEDY
51. MICHIGAN OUTDOORS	MORT NEFF/WXYZ	.14	2	2	NB		TRAVEL/ADV.
52. CHALLENGING SEA**	BILL BURRUD/NBC FILMS	.14	2	2	NB		NATURE
53. DEPARTMENT S**	ATV	.14	2	2	NB		DRAMA

PROGRAM	PRODUCER	% OF ENT. PGMS. IN ACC. TIME	# OF HRS.	# OF MKTS.	BARTER VS. NON-BARTER	NEW DOM.* SYND. PGMS. SINCE PTAR	TYPE
54. DR. WHO**	BBC TV	.07	1	1	NB		SCI. FIC.
55. BUCK OWENS RANCH SHOW	BUCK OWENS/ MIKE OWENS	.07	1	1	NB		MUS./VAR.
56. AMERICAN ADVENTURE		.07	1	1	B	X	TRAVEL
57. ROLLER DERBY	BAY PROMOTIONS	.07	1	1	B		SPORTS
58. SIX WIVES OF HENRY VIII**	BBC	.07	1	1	NB		DRAMA
59. GOLDEN VOYAGE**	GOLDEN VOYAGE PRODS./JACK DOUGLAS/NTA	.07	1	1	NB		NAT./TRAV.
60. TRAVEL ADVENTURE**	GEO. BAGNELL ASSOC.	.07	1	1	NB		TRAVEL
61. ZOORAMA**	KFMB-TV	.07	1	1	NB		NATURE

* PROGRAMS WHICH ARE DERIVATIVE OF PRE ACCESS SHOWS (SUCH AS PARENT GAME, WHICH IS A SPINOFF OF 5 SIMILAR SHOWS BY THE SAME PRODUCER) ARE TREATED AS AVAILABLE BEFORE PTAR.

** PRODUCED ENTIRELY OR IN PART ABROAD.

EXHIBIT 9

THREE YEAR COMPARISON OF ENTERTAINMENT PROGRAMS BY

BARTER VS. STRAIGHT RENTAL

	<u>1972 - 1973</u>		<u>1971 - 1972</u>		<u>1970 - 1971</u>	
	<u># OF HALF HRS.</u>	<u>%</u>	<u># OF HALF HRS.</u>	<u>%</u>	<u># OF HALF HRS.</u>	<u>%</u>
BARTER	329	23.8%	283	22.0%	47	3.1%
STRAIGHT RENTAL	1054	76.2%	1004	78.0%	1490	96.9%
<hr/>						
TOTAL	1383	100.0%	1287	100.0%	1537	100.0%

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	Docket No.
)	19622
Consideration of the operation)	
of, and possible changes in,)	
the "prime time access rule,")	
Section 73.658 (k) of the)	
Commission's Rules)	

FURTHER SUPPLEMENTAL JOINT APPENDIX

1973 - '74 ACCESS PROGRAMMING

JOINT APPENDIX OF:

MCA Inc.
Paramount Pictures Corporation
Screen Gems, A Division of Columbia
Pictures Industries, Inc.
Warner Bros. Television

Plus:
MGM Television
Twentieth Century-Fox

September 12, 1973

This table analyzes, by broad type, those programs scheduled in the 3rd year -- '73-'74 -- of the prime time access rule. Prior to the rule, network entertainment programming occupied 1137 half-hours, or 54.1%, of "access time."

For '73-'74, syndicated entertainment programming occupies 1382 half-hours or 66.8% of the total. News, local-interest programs, and movies are scheduled in the balance of "access time."

Table 1

1973-74

TOTAL ACCESS PROGRAMMING BY TYPE

	<u># half-hours</u>	<u>%</u>
1970-71 season before rule (network programming)	(1137)	(54.1)

<u>1973-74 season</u>		
Entertainment	1382	66.8
(Top 23 entertainment programs)	(1132)	(54.7)
News (local and network)	475	23.0
Local interest (non-news)	145	7.0
Movies	66	3.2
	-----	-----
Total Access Programming	2068	100.0%

This table analyzes program types, before and since the rule.

For '73-'74, the third year since the rule began, the average viewer will again have a very narrow choice of entertainment programming. About 55% of all entertainment half-hours are game shows, a fivefold increase from 11% in the year before the rule. Meanwhile, those entertainment programs

with the highest degree of social relevance -- comedies (like "Sanford & Son," etc.) have declined from almost 22% to under 7%; and dramas ("The Waltons," etc.) have declined from over 46% to under 12%. In addition, as prior filings indicated, the majority of even that small amount of drama in access is produced abroad, with minimal social content relevant to American life.

Table II

FOUR YEAR COMPARISON OF ENTERTAINMENT PROGRAMS, BY TYPE

	<u>1973-74</u>		<u>1972-73</u>		<u>1971-72</u>		<u>1970-71</u>	
	<u># half-hours</u>	<u>%</u>	<u># half-hours</u>	<u>%</u>	<u># half-hours</u>	<u>%</u>	<u># half-hours</u>	<u>%</u>
GAME	758	54.8%	672	48.6%	294	22.8%	170	11.1%
DRAMA	160	11.6	228	16.5	357	27.7	712	46.3
VARIETY	194	14.0	255	18.4	225	17.5	265	17.2
NATURE/ TRAVEL	146	10.6	98	7.1	81	6.3	36	2.3
CARTOON	25	1.8	59	4.3	2	0.2	--	--
COMEDY	91	6.6	24	1.7	242	18.8	334	21.7
MISC.	8	0.6	47	3.4	86	6.7	20	1.3

This table analyzes access programs by genesis.

For example, it indicates that 76% of the entertainment programming in access time was not from "new and diverse sources," but rather old or current daytime U.S. network series or pilots, that could be easily and cheaply revived; or imports from foreign networks which, themselves, impose stringent quotas on U.S. production.

In addition, a large syndication market existed before the access rule. Programs available via syndication, then, without "benefit" of the rule, now fill another 18% of the access entertainment time periods.

Indeed, "new" programming created expressly for access syndication, is only 6% of the '73-'74 total, up from '72-'73's negligible 2% and down from '71-'72's 10%.

Table III

THREE YEAR COMPARISON OF ENTERTAINMENT PROGRAMS, BY GENESIS

	<u>1973-74</u>		<u>1972-73</u>		<u>1971-72</u>	
	<u># of</u> <u>half-hours</u>	<u>%</u>	<u># of</u> <u>half-hours</u>	<u>%</u>	<u># of</u> <u>half-hours</u>	<u>%</u>
<u>Programs available</u> <u>without Access Rule</u>						
From: U.S. networks	852	61.6	841	60.8	924	71.8
Foreign networks	197	14.3	244	17.6	35	2.7
Prior syndication	252	18.2	269	19.5	199	15.5
<u>Programs available</u> <u>"because" of rule</u>	81	5.9	29	2.1	129	10.0
Total	1382	100.0%	1383	100.0%	1287	100.0%

Table IV analyzes each of the "top 23" access shows, in many aspects.

It offers the basis for direct evaluation of programming resulting from the rule; and allows comparison to new, independently-produced programming denied network distribution by the rule.

In '73-'74, the "top 23" access shows occupy 1132 half hours -- 82% of all access entertainment programming, and 55% of all access time programming (compared to 1137 network half hours in '70-'71, 54.1% of access time programming).

In '72-'73 and '73-'74 only 33 independent new programs could achieve regular once-a-week broadcast on the networks. 24 were given partial exposure and 160 were denied access altogetherout of 217 network pilots produced for network distribution.

Meanwhile, 21 of the "top 23" access entertainment shows were revived (see **) or foreign (see ##) network programs. 10 of the "top 23" are old network game shows, originally or still stripped.

Access' top 10 alone, filling 58.5% of the time, were available to the audience for a total of 138 years, for about 18,000 non-access broadcasts.

TABLE IV

73-73 SEASON - TOP 23 ACCESS SHOWS

SHOWING:

- NETWORK REVIVALS FOR ACCESS
 - ** Revived American
 - ## Foreign
- CURRENT NETWORK INTEREST
- LACK OF DIVERSITY

RANK	TITLE	DIVERSITY AND SOURCES?	TYPE PRODUCER FACILITIES DISTRIBUTOR	% OF SYN- DICATED ACCESS ENTER- TAINMENT	C U M U L A I V E	C U M U L A I V E	NEW?	AVAIL- ABLE WITH OR W/O PTAR	BROADCASTS (NETWORK OR SYNDICATION) WITHOUT PTAR	TOTAL YEARS OF U.S. BROAD- CAST	C U M U L A I V E	C U M U L A I V E
1	**TO TELL THE TRUTH (Strip)		GAME Goodson-Todman NBC facilities Firestone	12.5%	173	36		W/O	CBS daytime strip CBS nighttime weekly	15.3	1650	
2	**TRUTH OR CONSE- QUENCES (Strip)		GAME Ralph Edwards Metromedia facili- ties Metromedia	10.4%	144	30		W/O	CBS nighttime weekly NBC daytime strip NBC nighttime weekly Syndication strip	18.1	3950	
				(22.9%)		(317)				(33.4)	(5600)	
3	**WHAT'S MY LINE (Strip)		GAME Goodson-Todman NBC facilities Viacom (CBS)	6.9%	95	19		W/O	CBS nighttime weekly Syndication strip	20.4	1730	
				(29.8%)		(412)				(53.8)	(7330)	

RANK	TITLE	DIVERSITY AND SOURCES?	TYPE	PRODUCER	FACILITIES	DISTRIBUTOR	% OF SYN- DICATED ACCESS ENTER- TAINMENT	C U M U L T I M E D I A	C U M U L T I M E D I A	NEW?	AVAIL- ABLE WITH OR W/O PTAR	BROADCASTS (NETWORK OR SYNDICATION) WITHOUT PTAR	TOTAL YEARS OF U.S. BROAD- CAST	C U M U L T I M E D I A	U NO. OF L U.S. A BROAD- T CASTS I (APPROX.) V WITHOUT E ACCESS	C U M U L T I M E D I A
4	**HOLLYWOOD SQUARES (NBC Daytime Strip + Two Access Episodes)	GAME Heatter-Quigley NBC facilities Rhodes Prod.	6.4%	89	49	W/O	NBC daytime strip (still on network) NBC nighttime weekly	7.6 (61.4)	1790 (9120)							
5	**LAWRENCE WELK	VARIETY Telekew ABC facilities Fedderson	4.8%	67	37	W/O	ABC nighttime weekly Local (LA) nighttime weekly	20.5 (81.9)	925 (10,045)							
6	**HEE HAW	VARIETY Yongestreet	4.6%	63	34	W/O	CBS nighttime weekly	1.6 (83.5)	73 (10,118)							
7	**NEW PRICE IS RIGHT (CBS Daytime Strip + One Access Episode)	GAME Goodson-Todman CBS facilities Viacom (CBS)	3.5%	49	47	W/O	NBC daytime strip NBC nighttime weekly ABC daytime strip ABC nighttime weekly CBS daytime strip (still on network)	17.2 (100.7)	2880 (12,998)							
8	**WILD KINGDOM	NATURE/TRAVEL Don Meier/Foreign	3.3%	45	45	W/O	NBC nighttime weekly Syndication weekly	9.3 (110.0)	240 (13,238)							

		DIVERSITY AND SOURCES?	C U M U L	C U M U L	NEW?	C U M U L	C U M U L
			% OF SYN- DICATED	A T	A T	A T	A T
		TYPE PRODUCER FACILITIES DISTRIBUTOR	ACCESS ENTER- TAINMENT	I BY 1/2 V HRS TELE- E CAST	I IN TOP V 50 MAR- E KETS	AVAIL- ABLE WITH OR W/O PTAR	BROADCASTS (NETWORK OR SYNDICATION) WITHOUT PTAR
						TOTAL YEARS OF U.S. BROAD- CAST	A BROAD- T CASTS I (APPROX.) V WITHOUT E ACCESS
RANK	TITLE						
8	**LET'S MAKE A DEAL (ABC Daytime Strip + One Access Episode)	GAME Hatos-Hall ABC facilities Worldvision (ABC)	3.3%	45	45	W/O	ABC daytime strip (still on network) NBC nighttime weekly NBC daytime strip NBC nighttime weekly
			(55.7%)	(770)		12.8 (122.8)	2690 (15,928)
10	**BEAT THE CLOCK (Strip)	GAME Goodson-Todman Foreign facilities Firestone	2.8%	39	8	W/O	CBS nighttime weekly ABC daytime strip Syndication strip
			(58.5%)	(809)		15.0 (137.8)	-2045 (17,973)
11	DUSTY'S TRAIL	COMEDY Metromedia	2.7%	37	37	WITH	(Gilligan's Island) (Dobie Gillis)
			(61.2%)	(846)		-	-
12	**OZZIE'S GIRLS	COMEDY Filmways Viacom (CBS)	2.5%	34	34	W/O	ABC nighttime weekly Network Pilot
			(63.7%)	(880)		21.0 (158.8)	700 1000+ (reruns) (19,673)
13	##STARLOST	DRAMA Glen Warren/Foreign CTV facilities 20th Century Fox	2.4%	33	18	W/O	Canadian TV Network
			(66.1%)	(913)		-	-

RANK	TITLE	DIVERSITY AND SOURCES?	TYPE PRODUCER FACILITIES DISTRIBUTOR	% OF SYN- DICATED ACCESS ENTER- TAINMENT	C U M U L T A CLEARANCE BY 1/2 HRS TELE- CAST	C U M U L T A CLEARANCE IN TOP 50 MAR- KETS	NEW?	AVAIL- ABLE WITH OR W/O PTAR	BROADCASTS (NETWORK OR SYNDICATION) WITHOUT PTAR	TOTAL YEARS OF U.S. BROAD- CAST	C U M U L T A NO. OF U.S. BROAD- CASTS E ACCESS	C U M U L T A I V WITHOUT ACCESS
14	##POLICE SURGEON		DRAMA Four Star/Foreign CTV facilities Four Star	2.3%	32	32		W/O	Canadian TV Network	-	-	
				(68.4%)		(945)						
15	**NEW TREASURE HUNT		GAME Chuck Barris ABC facilities Sandy Frank	2.2%	31	31		W/O	ABC nighttime weekly NBC nighttime weekly NBC daytime strip	4.0 (162.8)	655 (20,328)	
				(70.6%)		(976)						
16	BOWLING FOR \$\$		GAMME FORMAT CLASTER	1.9%	26	6		W/O	Syndication strip (bowling programs) (Dialing for \$\$ - Movie giveaways)	5.0+ (167.8)	1000+ (21,328)	
				(72.5%)		(1002)						
17	**WAIT TILL/HOME		CARTOON Hanna-Barbera Partly foreign Rhodes	1.4%	20	20		W/O	ABC pilot aired as part of Love American Style	-	1 (21,329)	
				(73.9%)		(1022)						
17	##WILD WILD WORLD OF ANIMALS		NATURE/TRAVEL Time Life Mainly Foreign	1.4%	20	20		Mainly W/O	Mainly Foreign Network	-	-	
				(75.3%)		(1042)						

RANK	TITLE	DIVERSITY AND SOURCES?	TYPE PRODUCER FACILITIES DISTRIBUTOR	% OF SYN- DICATED ACCESS ENTER- TAINMENT	C U M U L T A CLEARANCE I BY 1/2 V HRS TELE- E CAST	C U M U L T A CLEARANCE I IN TOP V 50 MAR- E KETS	NEW?	AVAIL- ABLE WITH OR W/O PTAR	BROADCASTS (NETWORK OR SYNDICATION) WITHOUT PTAR	TOTAL YEARS OF U.S. BROAD- CAST	C U M U L A NO. OF U.S. A BROAD- T CASTS I (APPROX.) V WITHOUT E ACCESS	C U M U L A T I V E
17	**DATING GAME (One of six similar games)		GAME Chuck Barris ABC facilities Sandy Frank	1.4%	20	20		W/O	Dating Game ABC daytime strip ABC nighttime weekly Newlywed Game ABC daytime strip (still on network) ABC nighttime weekly Family Game ABC daytime strip Game Game Syndication strip How's Your Mother- in-law? ABC daytime strip Parent Game Syndication strip	25.8	4300 (193.6)	(25,629)
				(76.7%)		(1062)						
20	## GREAT MYSTERIES		DRAMA Anglia Foreign facilities 20th Century Fox	1.4%	19	19		W/O	Foreign network			
				(78.1%)		(1081)						

RANK	TITLE	DIVERSITY AND SOURCES?	TYPE PRODUCER FACILITIES DISTRIBUTOR	% OF SYN- DICATED ACCESS ENTER- TAINMENT	C U M U L T A CLEARANCE BY 1/2 HRS TELE- CAST	C U M U L T A CLEARANCE IN TOP 50 MAR- KETS	NEW?	AVAIL- ABLE WITH OR W/O PTAR	BR ADCASTS (NI WORK OR SYNDICATION) WITHOUT PTAR	TOTAL YEARS OF U.S. BROAD- CAST	C U M U L T A NO. OF U.S. BROAD- T CASTS V WITHOUT E ACCESS	C U M U L T A I V E
21	**CONCENTRATION (Strip)		GAME Goodson-Todman NBC financial interest Metromedia facili- ties Victory Dist. (also associated with NTA, ex-NBC syndication.)	1.3%	18	10		W/O	NBC daytime strip NBC nighttime	15.5	3950	
				(79.4%)	(1099)					(209.1)	(29,579)	
22	##THE PROTECTORS		DRAMA ATV-Brut Foreign facilities	1.2%	17	17		W/O	British Network	-	-	
				(80.6%)	(1116)							
23	##EVIL TOUCH (out of production)		DRAMA Allied/Foreign Australian facilities	1.2%	16	15		W/O	Foreign Network	-	-	
				(81.8%)	(1132)							
SUB TOTAL TOP 23 ACCESS SHOWS (equivalent to network programming preempted by PTAR)				*81.9%	1132							
+ ALL OTHER ACCESS SHOWS				18.1%	250							
GRAND TOTAL ACCESS ENTERTAINMENT				100.0%	1382							

*Rounded

Diversity of programming was one of the major goals of the prime time access rule. However, currently during access time, viewers in many cities have little or no choice of what type of program they can watch.

As illustrated in Table V, 46 per cent -- 23 of the top 50 markets -- strip either two or three competing game shows during access time.

T A B L E V

THREE COMPETING GAME STRIPS

<u>MARKET</u>	<u>PROGRAM</u>	<u>STATION</u>
Cincinnati	BOWLING FOR \$\$	WKRC
	T or C	WCPO
	TTTT	WLWT
Memphis	WHAT'S MY LINE	WHBO
	TTTT	WREC
	T or C	WMC
Greensboro-Winston Salem-High Point	T or C	WGHP
	BEAT THE CLOCK	WFMY
	WHAT'S MY LINE	WXII
Toledo	BOWLING FOR \$\$	WDHO
	TTTT	WTOL
	WHAT'S MY LINE	WSPD

TWO COMPETING GAME STRIPS

Philadelphia	TTTT	WPVI
	WHAT'S MY LINE	KYW
Detroit	TTTT	WXYZ
	T or C	WJBK
Boston	TTTT	WCVB
	WHAT'S MY LINE	WNAC
Cleveland	TTTT	WEWS
	T or C	WJW
Seattle	TTTT	KOMO
	T or C	KING
Tampa	TTTT	WFLA
	T or C	WTVT
Sacramento	T or C	KOVR
	BOWLING FOR \$\$	KXTV

TWO COMPETING GAME STRIPS (cont'd)

Buffalo	TTTT BOWLING FOR \$\$	WKBW WGR
Portland	TTTT WHAT'S MY LINE	KATU KGW
Columbus	T or C BEAT THE CLOCK	WTVN WLWC
Providence	WHAT'S MY LINE CONCENTRATION AND: BEAT THE CLOCK TTTT	WPRI WJAR WPRI WJAR
Albany	T or C TTTT	WAST WTGN
Charleston- Huntington	T or C WHAT'S MY LINE	WSAZ WCHS
Birmingham	TTTT T or C	WBRC WBMG
Charlotte	CONCENTRATION TTTT	WCCB WSOC
Louisville	T or C TTTT	WHAS WAVE
Phoenix	WHAT'S MY LINE TTTT	KTVK KOLD
Greenville- Spartanburg	T or C WHAT'S MY LINE AND: TTTT BEAT THE CLOCK	WLOS WFBC WLOS WSPA
Norfolk	T or C WHAT'S MY LINE	WTAR WAVY

Table VI shows the economic failure of access production, in addition to TV's usual creative risks. The rate of access show failure is about three times the rate of network program failure.

The negative economic ramifications of original access production, combined with the need for network O&O clearance (of non-strip programs) indicates that diverse, high-quality programming cannot be extensively produced and distributed under the rule.

The testimony of the substantial majority of independent producers, and their negative experience developing profitable access programming, is in the FCC record, proved, rather than disputed, by the few exceptions.

Further proof of the predictable counter-productivity of the rule, both creatively and economically, can be found in the following list of 37 programs created or revived unsuccessfully in the first two years alone.

Access programs no longer in production, their producers and distributors, follow on this mortality table.

T A B L E VI

ACCESS PROGRAMS

FIRST-TWO-YEARS MORTALITY TABLE

<u>PROGRAM</u>	<u>PRODUCER</u>	<u>DISTRIBUTOR</u>
MOUSE FACTORY	Walt Disney	Buena Vista
YOUNG DR. KILDARE	MGM	MGM
LASSIE	Wrather	Wolper TV/Campbell Soup/ Ogilvy & Mather
THIS IS YOUR LIFE	Ralph Edwards	Wolper TV/Lever Bros/O&M
THE HENRY MANCINI SHOW	Burt Sugarman	Campbell Ewald/ Chevrolet
THE GOLDDIGGERS	Greg Garrison	"
FAMILY CLASSICS	Rankin & Bass/GE/ Tomorrow	GE/Tomorrow
PRIMUS	Metromedia	MPC
JUVENILE JURY	Jack Barry	Four Star
ZOORAMA	KFMB-TV	Geo Bagnell
CIRCUS	Joseph Cates	20th Century Fox
STORY THEATRE	Winters Rosen	Winters Rosen
HALF OF THE GEORGE KIRBY SHOW	Winters Rosen/ Group W	"
ELECTRIC IMPRESSIONS	Group W	Group W
STREET PEOPLE	"	"
SMOTHERS BROTHERS ORGANIC PRIME TIME SPACE RIDE	" /Comedic/ Smothers	"
NORMAN CORWIN PRESENTS	" /Corwin	"
DAVID FROST REVUE	" /Paradine	"
ON THE BUSES	London Weekend TV	"

Continued

FIRST-TWO-YEARS MORTALITY TABLE (cont'd)

EXPLORERS	Wolper	Wolper/Hughes Sports Network
WORLD OF LOWELL THOMAS	Odessy/BBC	Time-Life
LIFE AROUND US	BBC	"
DR. WHO	BBC	"
I'VE GOT A SECRET	Goodson Todman	Firestone
ALL ABOUT FACES	Screen Gems	Screen Gems
PAPENT GAME	Chuck Barris	Sandy Frank
GAME GAME SHOW	"	Viacom
EVIL TOUCH	Allied Artists	Allied Artists
MONTY NASH	Almada	Four Star
MOVIE GAME	Henry Jaffe	Syndicast
STUMP THE STARS	Stokey	Alan Entprs.
MIDWESTERN HAYRIDE	Avco	Avco
DEATH VALLEY DAYS	Madison Prods/US Borax	US Borax/McCann-Erickson
THE ADVENTURER	ATV	Campbell Ewald/Chevrolet
UFO	"	ITC
DEPARTMENT S	"	"

In public affairs programming, for '73-'74, no regular weekly network public affairs shows remain in prime time. To understand the full ramifications of the access rule, one must realize that NBC and CBS, alone, offered one hour weekly of public affairs in prime-time (plus occasional special broadcasts) before the rule. In the top 50 markets, this is equivalent to 200 weekly half-hour telecasts, no longer seen; by contrast, in '73-'74, individual stations offer only 145 half-hours of public affairs programming in access time.

In entertainment programming, using this season's "top 23" access shows as a base, how then can a reasonable comparison be made to new, independently produced programming foreclosed from network distribution by the rule?

217 pilots for diverse, new programs were made for network distribution in '72-'73 and '73-'74. Only 33 became weekly series. The balance, of course, represents the diverse creativity denied regular access because of the rule.

Table VII simply lists the top access shows (by clearance) and compares them to network programming (in time-periods adjacent to access from Sunday through Saturday) because audience appeals are similar.

The reader is invited to make his own evaluations of "quality."

TABLE VII

TOP 23 ACCESS, BY CLEARANCE

NETWORK, ADJACENT TO ACCESS

TO TELL THE TRUTH	or	WALT DISNEY PRESENTS
TRUTH OR CONSEQUENCES	or	THE NEW PERRY MASON
WHAT'S MY LINE	or	THE F. B. I.
HOLLYWOOD SQUARES	or	NBC SUNDAY MYSTERY MOVIE (Colombo, McMillan & Wife, etc.)
LAWRENCE WELK	or	BARNABY JONES
HEE HAW	or	ABC SUNDAY MOVIE (Airport, Funny Girl, etc.)
PRICE IS RIGHT	or	LOTS A LUCK
WILD KINGDOM	or	GUNSMOKE
LET'S MAKE A DEAL	or	THE ROOKIES
BEAT THE CLOCK	or	CHASE
DUSTY'S TRAIL	or	MAUDE
OZZIE'S GIRLS	or	TEMPERATURES RISING
STAR LOST	or	ADAM 12
POLICE SURGEON	or	SONNY & CHER
NEW TREASURE HUNT	or	BOB & CAROL
BOWLING FOR \$\$	or	FLIP WILSON
WAIT 'TILL YOUR FATHER GETS HOME	or	THE WALTONS
WILD, WILD WORLD OF ANIMALS	or	TOMA
DATING GAME	or	SANFORD & SON
GREAT MYSTERIES	or	CALUCCI'S DEPARTMENT
CONCENTRATION	or	BRADY BUNCH
THE PROTECTORS	or	EMERGENCY
EVIL TOUCH	or	ALL IN THE FAMILY
		PARTRIDGE FAMILY

NCITP

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NCITP

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Edward Rissien - Playboy Prods., Inc.

Richard Irving -

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504
March 21, 1973

DIRECTOR

Honorable Dean Burch
Chairman
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20036

Dear Dean:

As you know, the President last fall directed the Office of Telecommunications Policy to study the causes and effects of the increasing percentage of same-season, prime-time reruns by the three television networks. The President noted that this increase diminishes the amount of diverse programming available to the viewers and threatens the economic health of the American programming industry. The President asked that we seek a voluntary solution to this problem or, failing that, explore whatever regulatory recommendations may be in order.

OTP has completed its study and has now forwarded a report of the results to the President. The study shows that the percentage of prime evening time programs rerun within the same television year has increased substantially over the past decade. The television networks are beginning earlier and earlier each year to repeat their prime-time television programs. This means that the viewers see fewer and fewer hours of new programs and that the viability of the television program production industry is further threatened.

In the 1962-63 television season, NBC, for example, was buying an average of 32 original episodes in a program series. This declined to 24 episodes in the 1971-72 season. Some series now have as few as 22 original episodes. Moreover, the combined effects of the increase in reruns and the Commission's prime-time access rule (\$73.658(k)) have reduced the amount of original prime-time programming on the three networks combined by 25% over the last ten years.

The principal reason for the increased rerun percentage has been the increased cost of the prime-time television program production. Between 1962 and 1971, network

payments for production of original program episodes increased by almost 90%. Increased reruns have become a way for the networks to maintain profit levels in the face of rising program costs. Our study, however, found that the most plausible explanation for much of this cost increase is the rivalry of the networks for ratings, which causes them to bid up the fees of the highly popular talent and also increases other costs that the studios incur.

The study concludes that the increasing percentage of prime-time reruns in each broadcast year has contributed significantly to the decline of employment in the television program production industry. Other factors include the increased use of feature-length movies in prime time by the networks and the prime-time access rule.

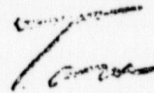
Since this study discloses no economic forces at work to halt the trend toward ever higher percentages of prime-time reruns, we believe that the networks should exercise voluntary restraints or that appropriate regulatory restraints should be considered.

OTP explored with the networks the possibility of voluntary reductions in the percentage of rerun programming in prime time. We did not suggest that they program any particular number of original episodes, but simply that they find ways to reverse the trend toward fewer and fewer original programs. The networks refused to consider adopting voluntary restraints; although one network indicated that it would be willing to do so if the cost of producing programs could be reduced.

In the face of the networks' unwillingness to consider voluntary solutions, OTP urges the Commission to conduct a full inquiry into this matter and consider whatever regulatory remedies may be appropriate in protecting the public interest. For your information, we have attached a copy of our rerun study. At this point, we recommend only an inquiry and not the imposition of restrictions, since it is not entirely clear whether direct restrictions or other measures would be the most appropriate way to deal with the root causes of the rerun problem.

The data that we have collected indicate that the effects of prime-time rule, like the effects of reruns, limit the amount of diverse, original, and high-quality programming available in prime time to the American public. Its effects also weaken the program production industry, contrary to the rule's basic objectives. The rule was intended to stimulate new programming markets, encourage independent sources of program production, and create more program diversity in prime-time TV than the networks were providing. There are enough anticompetitive forces at work in TV without the Government adding more. Therefore, we also recommend that the prime-time rule be changed to allow the networks to program on a regular basis in the 7:30 - 8:00 p.m. time period beginning this fall.

Sincerely,



Clay T. Whitehead

Enclosure

GOODSON
TODMAN
PRODUCTIONS

NEW YORK

RECEIVED

JUL 15 1970

375 PARK AVENUE • NEW YORK 22, NEW YORK • PLAZA 1-0600

COMPLAINTS FOR
CONTINUATION

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JULY 8, 1970

THE HONORABLE DEAN BURCH
CHAIRMAN
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

DEAR SIR:

12782

THIS LETTER IS WRITTEN WITH RESPECT TO THE COMMISSION'S
RECENT REPORT AND ORDER DOCKET 12782 LIMITING THE AMOUNT
OF PRIME TIME PROGRAMMING A TELEVISION STATION MAY ACCEPT
FROM A NETWORK SOURCE.

IN THE REPORT AND ORDER THIS COMPANY IS MENTIONED AS
HAVING BEEN A REGULAR PROGRAM SUPPLIER TO THE NATIONAL
TELEVISION NETWORKS FOR MANY YEARS.

WE UNDERSTAND THAT THERE HAVE BEEN NUMEROUS FILINGS
WITH THE COMMISSION WHICH ARGUE THAT IF THE COMMISSION'S
ORDER STANDS INDEPENDENT PROGRAM SUPPLIERS WILL BE UNABLE
TO OBTAIN THE FINANCIAL SUPPORT NECESSARY TO PRODUCE TELE-
VISION SERIES ON A SYNDICATED BASIS TO FILL THE PRIME TIME
PERIODS VACATED BY THE NETWORKS.

THE PURPOSE OF THIS LETTER IS TO ADVISE THE COMMISSION
THAT DURING THE TELEVISION SEASON 1969-1970 GOODSON-
TODMAN PRODUCTIONS AND ITS RELATED COMPANIES PRODUCED
AND LICENSED FOR SYNDICATION DISTRIBUTION 20 HALF-HOURS
PER WEEK OF NEW TELEVISION PROGRAMS, CONSISTING OF FOUR
DIFFERENT DAILY SERIES. THREE OF THESE SERIES HAD BEEN
PREVIOUSLY TELECAST FOR MANY YEARS BY THE NATIONAL NET-
WORKS; ONE SERIES WAS BRAND NEW. FINANCING AND DISTRI-
BUTION ARRANGEMENTS VARIED FOR EACH SERIES IN RELATION
TO MARKET CONDITIONS. STATION LINE-UPS DURING THE 1969-
1970 SEASON RANGED FROM 35 TO MORE THAN 60 STATIONS, MAINLY
MAJOR MARKETS. PRIME EVENING TIME PERIODS WERE GENERALLY
CLEARED ON NON-NETWORK AFFILIATED STATIONS, AND IN VARIOUS
MAJOR MARKETS WE WERE SUCCESSFUL IN CLEARING 7:00 - 7:30 PM

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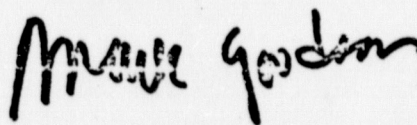
JULY 8, 1970

ON NETWORK AFFILIATED STATIONS. PRODUCTION FOR EACH SERIES VARIED ON AN ANNUAL BASIS FROM 42 WEEKS OF NEW PROGRAMS AND TEN WEEKS OF REPEATS TO A MINIMUM OF 39 WEEKS OF NEW PROGRAMS AND 13 WEEKS OF REPEATS. IN NO INSTANCE DID THE RATIO OF NEW TO REPEAT PROGRAMS APPROXIMATE THE 30/20, 26/26, OR 24/24 THAT HAVE EMERGED IN NETWORK PROGRAM PRACTICES.

FOR THE 1970-1971 SEASON, WE ARE COMMITTED TO PRODUCE AND LICENSE FOR SYNDICATION DISTRIBUTION AT LEAST 15 HALF-HOURS PER WEEK OF PROGRAMS, CONSISTING OF THREE SERIES. WE HAVE BEEN OBLIGED TO HOLD OFF THE MARKET SEVERAL ADDITIONAL PROPERTIES BECAUSE OF THE INABILITY TO CLEAR SUFFICIENT EVENING TIME IN MAJOR MARKETS. IN THE EVENT THE COMMISSION REAFFIRMS ITS ORDER AND BROADENS THE MARKET FOR SYNDICATED PROGRAMS, IT IS OUR INTENT TO PRODUCE ADDITIONAL PROGRAM SERIES INCLUDING BUT NOT LIMITED TO GAME AND PANEL SHOWS. WE BELIEVE OUR EXPERIENCE HAS DEMONSTRATED THE FINANCIAL VIABILITY OF THE SYNDICATED MODE OF PRODUCTION AND DISTRIBUTION. WITH AN INCREASED MARKET POTENTIAL, WE HAVE NO DOUBT OF OUR ABILITY TO INCREASE OUR SERVICE AS A PROGRAM SUPPLIER.

WE NOTE THAT THERE HAVE ALSO BEEN NUMEROUS FILINGS WITH THE COMMISSION FROM HOLLYWOOD LABOR UNIONS, PERFORMERS, AND FILM PRODUCERS ARGUING THAT THE COMMISSION'S ORDER WILL BE INJURIOUS TO THE HOLLYWOOD FILM INDUSTRY. SUCH OBJECTIONS WOULD HAVE BEEN MORE TIMELY AND APPROPRIATE HAD THEY BEEN FILED SEVERAL YEARS AGO WHEN THE NATIONAL NETWORKS VOLUNTARILY SCHEDULED FOR TELECAST IN PRIME TIME FEATURE FILMS THAT HAD BEEN PREVIOUSLY PRODUCED AND THEATRICALY RELEASED. IN PROGRAMMING THESE FEATURE FILM RERUNS THE NETWORKS REDUCED THE MARKET FOR NEW PROGRAM PRODUCT FAR MORE THAN ANY POSSIBLE EFFECT OF THE COMMISSION'S ORDER.

SINCERELY,

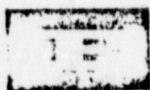


MARK GOODSON

MG:LIZ

ORIGINAL
FILE

FIRESTONE



FILM SYNDICATION

477 MADISON AVENUE
NEW YORK, N. Y. 10022

July 14, 1970

Honorable Dean Burch, Chairman
Federal Communications Commission
Washington, D.C.

Dear Sir:

As a distributor of TV programs we are vitally interested in the FCC ruling limiting network service to three hours in prime time.

We are currently distributing To Tell The Truth, which is produced for first run syndication by Goodson-Todman. Although the program is seen in approximately 50 markets, it is limited in most markets to fringe time because of the unavailability of prime time on the network affiliated stations.

We previously distributed two other first run syndicated shows, namely, The Steve Allen Show and Pat Boone in Hollywood, which were produced live on tape by Filmways. Both of these properties were of the variety format and featured top name guest stars daily from the entertainment world. Because of the lack of available time periods, we were unable to clear enough markets to enable us to continue production, and as a result, Steve Allen had a two year run and Pat Boone a one year run.

We are presently in discussions with a number of major TV producers regarding the production and distribution of top quality, first run programs but are severely limited by the lack of available time periods in the major markets.

It is our strong feeling that the three hour network limitation would enable producers and distributors like ourselves to offer excellent and diverse programming of network quality, to fill the additional time periods made available by the three hour limitation.

(over)

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JUL 17 1970

DEAN BURCH

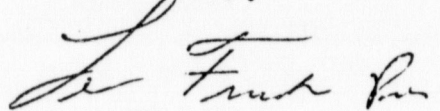
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Honorable Dean Burch

July 14, 1970

We therefore urge that the three hour rule, as now constituted, remain in effect in order to encourage the production of more first run programming than is presently possible, and thereby expand the viewer's selectivity from its present limitations.

Yours truly,


Len Firestone

LF/sae

cc: Robert Bartley
Nicholas Johnson
Robert E. Lee
H. Rex Lee
Robert Wells
Kenneth Cox

SN

SAMUEL GOLDWYN PRODUCTIONS

1041 NORTH FORMOSA AVENUE
LOS ANGELES, CALIFORNIA 90046

JACK P. FOREMAN
GENERAL MANAGER

January 12, 1973

RECEIVED BY REC
MAIL BRANCH ON

JAN 14 1973

The Honorable Dean Burch, Chairman
Federal Communications Commission
Washington D. C. 20554

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DEAN BURCH
CHAIRMAN
F.C.C.

JAN 15 4 17 PM '73

REC'D

Dear Sir:

This letter is written with respect to the Commission's recent Notice in Docket 19622 requesting comment with respect to the prime-time access rule.

Samuel Goldwyn Productions operates a ten acre film studio in Hollywood for rental to independent producers of television programs and motion pictures. It is one of the few companies, other than the major studios, providing facilities to independent producers.

During the past five years, approximately 60% of Goldwyn's activities have been in the area of filmed television programs, including such series as "The Loretta Young Show", "The Fugitive", "Cannon", and "Barnaby Jones."

Since the passage of the prime-time access rule, production of original filmed entertainment by independent television producers at our studio has declined by approximately 25%. We believe that other independent studios have experienced a decline of similar or greater magnitude.

This has occurred because the rule has led to the preponderance of inexpensive programming in the access time period produced on tape or programs produced in foreign countries on tape or on film. The rule has thus caused serious economic injury to independent film studios and various companies providing ancillary services. This, of course, has further aggravated the severe unemployment problem in the film production industry.

We respectfully submit that the prime-time access rule has not achieved its goal. Instead of stimulating new sources of supply and greater diversity of programming, the rule has caused a decline in the production of high quality filmed television entertainment and flooded the airways with taped game shows and cheap foreign production.

19622-12

page two

The Honorable Dean Burch, Chairman

January 12, 1973

We, therefore, request that the Commission repeal the rule and allow the forces of free competition to return a more diverse and higher quality program fare for the viewing audience during the early evening hours in the "access" time period.

Yours truly,

Jack P. Freeman

JF/ep
airmail

